(21,893.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 667.

FRED LIGHT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

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1 Pleas in the Circuit Court of the United States for the District of Colorado, Sitting at Denver.

Be it remembered, that heretofore, and on, to-wit, the seventh day of April, A. D. 1908, came The United States of America, by Ernest Knaebel, Esquire, special assistant to the Attorney General, its solicitor, and filed in said court its bill of complaint against Fred Light.

And said bill of complaint is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Eighth Judicial Circuit and the District of Colorado.

In Equity.

Bill of Complaint.

To the Honorable the Judges of the Circuit Court of the United States for the District of Colorado:

Charles J. Bonaparte, Attorney General of the United States, brings this bill for and on behalf of the United States of America, complainant herein, against Fred Light, a citizen and resident of the state and district of Colorado.

And thereupon your orator alleges and shows unto your Honors:

2 First. On August 25, 1905, the President of the United States, by his proclamation duly made and issued on that day, did, by virtue of, and in accordance with the authority conferred upon him by Sec. 24 of the Act of Congress approved March 3, 1891, entitled "An Act to Repeal Timber Culture Laws and for other Purposes" (26 Stat. 1095), reserve from entry or settlement and set apart as a public reservation, to be known as the Holy Cross Forest Reserve, a large body of the public lands of the complainant, situate, lying and being within the limits of the state and district of Colorado, which body of lands, by force of the said proclamation, so authorized and so reserving the same, has ever since the date of the said proclamation constituted and been, and now constitutes and is a public forest reservation of the complainant set aside for and devoted to the effectuation of its laws and policy touching the preservation and use of the national forests, and which reservation, since the creation thereof, as aforesaid, has been and now is, by virtue of the laws of the complainant, subject to the administrative authority and control of its Secretary of Agriculture.

For a full description of the bounds of the said reservation, should such become material to consider in the progress of this cause, your orator requests leave to refer to the said proclamation wherein the description is fully set forth.

Second. The Secretary of Agriculture, in fulfilment of the
3 duties, and in pursuance of the authority devolving upon him
under the laws of the complainant, has from time to time made, adopted, revised and publicly promulgated reasonable rules and regulations to insure the objects of the national forest reservations—including the said Holy Cross Reserve—to-wit, to regulate their occupancy and use, and to preserve the forests thereon from destruction. Such rules and regulations were so adopted and promulgated by him on June 13, 1905, and twice again, to-wit, on June 12, 1906, and June 3, 1907, in revised forms with certain changes and additions not material to be expressly mentioned here.

Third. The Secretary of Agriculture, in the exercise of his lawful authority and in fulfilment of his lawful duties, has caused to be investigated the effect of excessive grazing of cattle in such forest reservations, and has found and determined that the same is detrimental not only to the best use of such reservations as aids to the livestock industry of the country, but also to the proper protection and perpetuation of the forests sought by the complainant to be protected, propagated and maintained thereon; and, accordingly now and at all times since before the creation of the said Holy Cross Reserve, it has been provided in and by the said regulations, among other things, that the number of stock (including cattle) which may be allowed to graze on any such reservation shall be pre-
scribed each year by the Secretary of Agriculture, that, with
4 certain exceptions expressed in Regulation 42, hereinafter
set out, no person owning or controlling cattle shall cause or allow them to graze within such reservation, without having first secured, through the Department of Agriculture, a permit therefor; that each such reservation shall be divided into grazing districts or areas, and that permits for not more stock in the aggregate than the maximum number so prescribed shall be granted to those who apply for them and comply with the said rules and regulations, according to a plan of equitable apportionment among applicants, and that cattle for which permits are so granted shall be assigned to and confined within different grazing districts, in such wise as to meet the convenience of such licensees, and prevent over-grazing in any portion of the reservation.

Among the said regulations of June 3, 1907, all of which are not and since their adoption have been, in full force and effect over national forest reservations generally, and over the Holy Cross Reserve specifically, are the following, to-wit:

REGULATION 39. Whenever any live-stock association whose membership includes a majority of the owners of any class of live-stock using a National Forest or portion thereof shall appoint a committee, an agreement on the part of which shall be binding upon the association, such committee, upon application to the Forester, may be recognized as an advisory board for the association, and shall then be entitled to receive notice of proposed action and have an opportunity to be heard by the local forest officer in reference to

increase or decrease in the number of stock to be allowed for
5 any year, the division of the range between different classes of stock or their owners, or the adoption of special rules to meet local conditions.

REGULATION 40. The Secretary of Agriculture will prescribe each year the number of stock to be allowed in each National Forest. The period during which grazing will be allowed will be determined by the Forester. The supervisor will issue grazing permits in accordance with the instructions of the Forester.

REGULATION 41. National Forests in which grazing is allowed will be divided into districts approved by the Forester, who will determine the kind of stock to be grazed in each district. The supervisor will make such range divisions among applicants for the grazing permits as appear most equitable and for the best interest of the National Forest and its users. When required for the protection of camping places, lakes and streams, roads and trails, etc., or of areas which are to be reforested, the supervisor may exclude stock from specified areas for such period of time as is necessary. Stock will be excluded from areas where they will destroy young growth or will prevent reproduction.

REGULATION 42. All persons must secure permits before grazing any stock in a National Forest, except for the few head in actual use by prospectors, campers, and travelers, or which are used in connection with business of the National Forests, and milch or work animals not exceeding a total of ten head owned and in use by bona fide settlers residing in or near a National Forest, which require no permit.

REGULATION 43. Permits will be granted only for the exclusive use and benefit of the owners of the stock and will be forfeited if sold or transferred in any manner or for any consideration. Speculation in the use of grazing permits will not be allowed, and permits will be refused or canceled for intentional false statement of the number of stock owned.

REGULATION 44. The supervisor will set and give public
6 notice of a date each year on or before which all applications for grazing permits must be presented to him. Permits may be refused to persons who do not file their applications within the required limit, unless satisfactory reasons are given.

REGULATION 45. Grazing applications must not cover more stock than the applicant desires to graze in the National Forest, and must show the marks and brands of the stock, the portion of the National Forest or district in which pasture is desired, and the grazing period.

REGULATION 46. Whenever there is a dispute between grazing applicants for the same area, the supervisor will notify them to appear before him at a stated time and place, to make a statement of their claims. After all evidence has been presented the supervisor will decide who shall be granted permits, and will forthwith notify each party to the dispute of his decision and his reasons therefor, which will be final unless written notice of appeal to the Forester is given him within ten days thereafter. Appeal will avail only in case of error.

REGULATION 47. Persons owning cattle and horses which regularly graze on ranges located along the boundary line and only partially included within a National Forest may be granted permits for such portion of their stock as the circumstances appear to justify, but may be required to herd or so handle their stock as to prevent trespassing by that portion for which a permit is not granted, and to sign supplemental agreement to that effect.

REGULATION 51. When an owner who has a permit is ready to drive in his stock he must notify the supervisor, by mail or otherwise, stating the number to be driven in; he must also notify the supervisor when the stock is removed. If called upon to do so, he must provide for having his stock counted before entering the National Forest, or at any time afterwards when the number of stock appears to be greater than the number covered by permit. Whenever any stock is removed before the expiration of the permit, it can be replaced by other stock to fill out the number covered
7 by permit if the nearest forest officer is notified of such action at once. The owners of stock which is kept under herd upon the National Forests will be furnished with cards for the identification of their herders by Forest Officers.

REGULATION 57. Whenever an injury is being done the National Forest by reason of improper handling of the stock, the owner must comply with the orders of the Forest officers or the permit will be canceled and the stock removed. The grazing of stock upon a closed area or upon range not allowed by the permit will constitute a trespass, and the owner of the stock will be held liable for damages.

REGULATION 60. All stock which is grazed under permit in or allowed to cross any National Forest will be required to conform to the quarantine regulations of the Bureau of Animal Industry, U. S. Department of Agriculture, and all live-stock laws of the state or territory in which the National Forest is located.

REGULATION 63. All forest officers will cooperate with state or territorial officials, so far as they can without undue interference with their regular forest work, to enforce local laws for the protection of game and stock. When authorized to do so by the proper state officers, they will, without additional pay, except such bounties and fees as are offered by associations, act as game wardens and stock inspectors with full power to enforce the local laws. If not so authorized, they will promptly inform the state officials of all vioations discovered.

And your orator further avers, that now, and ever since the creation of the said Holy Cross Reserve, it is, and has continuously been forbidden by the reules and regulations of the Secretary of Agriculture, and in violation of the laws of the complainant, for any person to graze or permit to graze upon that reserve, or any part
8 thereof, any cattle owned or controlled by him, without having first secured an express permit therefor, from or under authority by the Secretary of Agriculture, save only as to such limited numbers and special classes of stock defined in the exceptions expressed in regulation number 42, as above set forth.

Fourth. Since a time long anterior to the creation of the said Holy

Cross Reserve, the defendant, Fred Light, has been engaged, without interruption, in the business of buying, breeding rai/ing and marketing cattle at a certain ranch, in the county of Pitkin, in said state and district, in township 9 south, range 86 west of the 6th principal meridian.

The said ranch consists of a track of land comprising some five hundred and forty acres, more or less, title to which was derived through entries made and patents issued, under the general land laws of the United States at times long antedating the said reservation, which titles, as your orator is informed by the defendant, are now held by him. The said ranch is situated approximately two and one-half miles to the east, and five miles to the north of the said Holy Cross Reserve, where the bound-ry of the latter forms a reentrant rectangle. A stream, commonly called South Sopris Creek, flows out of said reserve and passes in a northeasterly court-
through the said ranch, and beyond. The vacant public,
9 unreserved lands of the complainant adjoin the boundary of
the said reserve at the said angle, and to the north and east from the apex thereof, and lie between the said reserve and the said ranch, and extend to and beyond the said ranch on the north and east thereof.

Fifth. The herd of the defendant, as maintained by him from year to year since before the creation of the said reserve, numbers, on an average, approximately five hundred *d*attle.

The said ranch is, and since before the creation of the said reserve has been used by the defendant during each winter for harboring and feeding his said cattle, and during each summer for raising the hay and other fodder necessary to feed them there during the ensuing winter. The defendant does not permit the said cattle to remain upon the said ranch during the grazing season commencing in the Spring, but, upon the opening of that season it has been and is his custom each year to drive and exclude them therefrom, and he has never provided, nor attempted to provide, for the pasturage and sustenance of his said stock during the grazing season, means other than those afforded by the grasses and other feed stuffs growing on the said vacant public lands and the said forest reservation; and prior to the creation of the said reserve it was also his custom, each Spring, to cause the said herd, or a large portion thereof, to be driven and herded away from the said ranch, up the
said stream, into what since the date of the said proclamation
10 has been, and now is, a portion of the said Holy Cross Re-
serve, lying south and west of the said ranch; that is to say, a certain portion of the said Holy Cross Reserve, which now constitutes, and throughout the year 1907 did constitute a parcel of one of the duly designated grazing districts thereof and which would be, if the public surveys were extended thereon according to the present system township 9 south, of range 87 west, of the 6th principal meridian, excepting what would be sections 1, 12, 13, 24 and 25 of such township; and did there each year cause and permit them to remain for summer grazing, whereby large numbers of the said herd acquired the habit of seeking and frequenting that locality,

a habit which has ever since continued and now exists, because of the unlawful practices of the defendant herein set forth, and the continued grazing of the said cattle in the same locality of the said reserve, as hereinafter shown. The cattle of the defendant mentioned and referred to in this bill are not and have not been, in whole or in part, of the character or classes excepted by the said regulation No. 42.

Sixth. During the summer grazing season of the year 1905 and 1906, to-wit; from about April 15th to about November 15th in each of those years, the defendant continued so to use and to cause and permit his cattle to graze upon the said lands of the said Holy Cross Reserve in said township 9, together with the aforesaid unreserved and vacant public lands of the complainant, and such use
11 was, in the year 1905, after the 25th of August thereof, under the license, authority and permission of, and throughout the said grazing season of the year 1906, under a permit in writing duly granted by authority of the Secretary of Agriculture; and the defendant, in the year 1906, did apply for and receive such permit in writing.

Seventh. Further complaining, your orator alleges and shows unto your honors, that afterwards, and at some time in the Spring of the year 1907, and prior to the 1st of June of that year, the defendant, though well knowing the existence and boundaries of the said reservation, and though thoroughly informed of and well knowing the provisions of the said rules and regulations which forbade that cattle be caused or allowed to graze within the said reservation without a license and permit of the character and authority hereinbefore mentioned, deliberately and intentionally turned a large number, to-wit, four hundred, of his cattle loose upon the said unreserved public lands of the complainant, at a certain gate opening out of the said ranch on the northerly side thereof, and wrongfully and unlawfully and knowingly, and without having secured or intending to apply for any permit or authority therefor from or authorized by the complainant or its Secretary of Agriculture, and in intentional disregard and defiance of the said rules and regulations, permitted the said cattle to go, in the same manner as the same herd had become
12 accustomed in previous years to go as aforesaid, directly from the said unreserved lands of the complainant into and upon the aforesaid portion of the said Holy Cross Reserve heretofore described as lying in said township 9, and to feed, graze and otherwise trespass thereon, there being then and now no fence separating the said reservation from the said unreserved public lands, as the defendant at all times in this bill mentioned well knew.

Eighth. And your orator avers that the defendant, when he turned his said cattle loose, as described in the next preceding paragraph of this bill, well knew that by reason of the topography of the land there and the superiority of the grasses and other fodder thereon, due to the limitation of the number of cattle allowed by the complainant to graze thereon, as well as by reason of the aforesaid habit of the herd, and their tendency to follow up the said stream, which then afforded the only water immediately and con-

veniently available for their consumption, the said cattle would naturally go, as they did in fact go, into the said reserve and feed and graze thereon, and he then expected and knew that such would be the result of his said liberation of the cattle without supervision or control, and took no precautions and did nothing whatever to prevent their aforesaid entry and trespass upon the said reservation,

13 and your orator alleges that the defendant, by liberating the said cattle in the manner and under the circumstances aforesaid, and with the knowledge aforesaid, and by knowingly and wrongfully permitting them to enter and trespass upon the said reservation, as aforesaid, wrongfully and intentionally caused the said cattle to enter the said reservation and commit the said trespass, in breach of your orator's property and administrative rights.

Ninth. Notwithstanding that the defendant was duly and repeatedly requested and notified by the proper officers and agents of the complainant's forest service, to remove his said cattle from the said reservation, he wrongfully and unlawfully failed and expressly refused so to do, but persisted in knowingly permitting the cattle so trespassing to remain within the said reservation at and near the portion thereof last above specified, throughout the grazing season of the year 1907, for the purpose of feeding and grazing thereon, in violation of the said regulations, without having any license, permit, consent or other authority from or under the complainant, and in utter disregard of its rights and laws.

Tenth. The said defendant threatens and intends, and has repeatedly and at divers times and places, openly as well as privately, stated, that it is his intention and purpose to disregard the said rules

14 and regulations, and without securing or applying for any permit or license from or under the authority of the complainant, to allow, and, in the same manner hereinbefore alleged, to cause, his said cattle to enter, trespass, feed and graze upon the complainant's said forest reservation during the present and ensuing years, in defiance of the laws and policy of the complainant concerning the preservation, use and management of the said reservation, and your orator avers that, unless restrained therefrom by the injunctive process of this Honorable Court, the defendant will carry out his said threats and intention, and repeat during each successive summer grazing season, from day to day and from year to year, the wrongs and injuries to the complainant hereinbefore described, to the permanent and irreparable damage and injury of the said reservation, and of the objects and purposes for which it was created.

Your orator avers that the aforesaid wrongful conduct of the defendant and the wrongful course which he intends, and so openly threatens to pursue as aforesaid, involve repeated, persistent, long-continuing and damaging trespasses, for the redress and prevention whereof no adequate remedy exists at the common law, and constitute and are a public nuisance, injurious and unjust to the complainant and to its many citizens who, through due and willing compliance with the said regulations, use and will use the said reservation, and particularly the said grazing district, for the grazing of

their stock legitimately, creating uncertainty and exciting
15 discontent in the minds of such persons, and greatly interfering with the due administration of the said reservation, and other similar reservations, under the complainant's laws, and tending ultimately to destroy such due administration and to frustrate the plans and policy by which the creation of such reservations was actuated.

In consideration whereof, and for as much as the complainant is without full and adequate remedy in the premises save in a court of equity, and to the end that the said defendant, Fred Light, may make full, true and direct answer to all and singular the matters and things hereinbefore set out, as fully as if he had been particularly interrogated thereunto, but not under oath, an answer under oath being hereby expressly waived; and to the end that the defendant, Fred Light, and all and singular his servants, agents, representatives and employés may be enjoined, ordered, adjudged and decreed absolutely and perpetually to cease and refrain from continuing or repeating in whole or in part the aforesaid wrongs and injuries, and from causing or permitting any cattle owned by him, or subject to his control, to enter or remain within the bounds of the said Holy Cross Forest Reserve, without the permission, permit and license of the complainant therefor, first duly had and obtained by due compliance with the aforesaid regulations of the complainant's Secretary of Agriculture, and to the further end that the
16 said defendant may be commanded, adjudged and enjoined to remove from the said reservation all cattle owned by him or subject to his control, which are or hereafter may be found within the said reservation in the absence of such permission, permit and license aforesaid; and further, that the complainant may have such other and further relief in the premises as to this court may seem just and equitable, together with reasonable costs, etc.

May it please your honors to grant unto the complainant a writ of subpœna, to be directed to the said Fred Light, thereby commanding him at a certain time and under a certain penalty therein to be limited, personally to appear before this Honorable Court and then and there full, true and direct answer make to all and singular the premises, and to stand, perform, and abide by such order, direction and decree as may be made against him in the premises, as shall seem meet and agreeable to equity.

And your orator will ever pray.

CHARLES J. BONAPARTE,
Attorney General.
ERNEST KNAEBEL,
Special Ass't to the Att'y General.

(Endorsed:) No. 5153. In the U. S. Circuit Court. For the eighth Judicial Circuit, and the District of Colorado. In Equity. The United States of America, vs. Fred Light. Bill of Complaint. Filed Apr. 7, 1908, Charles W. Bishop, Clerk. Ernest
17 Knaebel, Sp'l Assistant to the Att'y Gen'l.

Ninety-third Day, November Term, Tuesday, April 14th, A. D. 1908.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the twenty-fifth day of February, A. D. 1908.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

At this day comes Ethelbert Ward, Esquire, a solicitor of this court, and files and enters herein his appearance and the appearance of Ralph W. McCrillis, Esquire, as solicitor for and on behalf of the respondent.

In the Circuit Court of the United States for the Eighth Judicial Circuit in and for the District of Colorado.

In Equity. No. 5153.

THE UNITED STATES OF AMERICA, Complainant.
vs.
FRED LIGHT, Defendant.

The Demurrer of Fred Light, Defendant, to the Bill of Complaint of the Above Named Complainant Herein.

This defendant, Fred Light, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint herein contained to be true, in such manner and form as the same are therein set forth and alleged, does demur to said bill and for cause of demurrer shows:

18 That said bill of complaint does not state any matter in equity entitling the complainant to the relief prayed for, nor are the facts, stated in said bill sufficient to entitle the complainant to any relief against this defendant.

Wherefore and for divers other errors and imperfections appearing in said bill and for divers other good causes for demurrer appearing on said bill, this defendant demurs thereto and he prays the judgment of this honorable court whether he shall be compelled to make any answer to said bill or any part thereof; and defendant humbly prays this honorable court to be hence dismissed with his reasonable costs in this behalf sustained.

ETHELBERT WARD,
RALPH W. McCRILLIS,
Solicitors for Defendant.

We, Ethelbert Ward and Ralph W. McCrillis, solicitors for the defendant in the above and foregoing demurrer in the above entitled cause, do hereby certify that the foregoing demurrer, in our opinion, is well founded in law.

ETHELBERT WARD.
RALPH W. McCRILLIS.

UNITED STATES OF AMERICA,
District of Colorado, County of Pitkin, ss:

Fred Light, being duly sworn, deposes and says, that he is the defendant in the above entitled cause and that the foregoing
19 demurrer is not interposed for delay.

FRED LIGHT.

Subscribed and sworn to before me this 13 day of April, A. D. 1908.
Witness my hand and *and* notarial seal.
My commission expires Feb. 11, 1911.

MANFORD W. SMITH,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsed:) No. 5153. In the U. S. Circuit Court for the Eighth Judicial Circuit and the district of Colorado. In Equity. The United States of America vs. Fred Light. Demurrer to Bill of Complaint. Filed Apr. 14, 1908, Charles W. Bishop, Clerk. Ethelbert Ward, Ralph W. McCrillis, Solicitors for Defendant.

One Hundred and Second Day, November Term, Wednesday April 29th, A. D. 1908.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the twenty-fifth day of February, A. D. 1908.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

This cause coming on now to be heard on the demurrer to the bill of complaint, is argued by counsel, Ernest Knaebel,
20 Esquire, special assistant to the Attorney General, appearing as solicitor for the complainant, and Etherbert Ward, Esquire, and Ralph W. McCrillis, Esquire, appearing as solicitors for the respondent.

And thereupon, on consideration thereof, it is ordered by the court that the said demurrer be, and the same is hereby overruled.

One Hundred Fourth Day, November Term, Saturday, May 2nd, A. D. 1908.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the twenty-fifth day of February, A. D. 1908.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

This cause coming on now to be heard, Ethelbert Ward, Esquire, appearing as solicitor for the respondent;

And thereupon, on his motion, it is ordered by the court, that the time within which the respondent shall answer the bill of complaint herein be, and the same is hereby, enlarged and extended to and including the eighteenth day of May, A. D. 1908.

21 In the Circuit Court of the United States for the Eighth Judicial Circuit and the District of Colorado.

In Equity. No. 5153.

THE UNITED STATES OF AMERICA, Complainant,
vs.
FRED LIGHT, Defendant.

The Answer of Fred Light, the Defendant, to the Bill of Complaint of the United States of America, the Complainant:

This defendant, now and all times hereinafter saving to himself all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill contained, comes and answers thereto, or to so much thereof as he is advised it is material or necessary for him to make answer to, and says:

First. The defendant admits that on August 25, 1905, the President of The United States made and issued the proclamation mentioned in paragraph first of the bill of complaint herein and that said proclamation purports to have been made and issued in accordance with the authority conferred upon the said President by section 24 of the Act of Congress approved March 3, 1891,
22 in said bill of complaint referred to, and he believes that said proclamation is of the tenor and effect in said bill of complaint alleged but for greater certainty he begs leave to refer to said proclamation upon the final hearing of this case.

The defendant admits that ever since the date of said proclama-

tion the premises thereinmentioned have constituted and been and at the date of the filing of the bill of complaint herein constituted *and* were a public forest reservation of the complainant set aside for and devoted to the effectuation of what complainant claims to be its laws and policy touching the preservation and use of the national forests, but defendant denies that said reservation has been or now is, by virtue of the laws of the complainant or otherwise, subject to the administrative authority or control of its Secretary of Agriculture; but on the contrary defendant submits that by the provisions of the laws of complainant relative to forest reserves, the jurisdiction of the State of Colorado over the said Holy Cross Reserve, both civil and criminal, is expressly admitted, and it is provided that said jurisdiction shall not be effected or changed by reason of the existence of such reservations except so far as the punishment of offences against the United States therein is concerned and that the said state of Colorado shall not, by reason of the
23 establishment of said reserve, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of said state, and that the laws of complainant further expressly provide that the officials of the forest service designated by the Secretary of Agriculture shall in all ways that are practicable, aid in the enforcement of the laws of the state with reference to stock. And the defendant is advised and humble submits to this Honorable Court that the proclamation of the President of the United States purporting to set aside the so-called Holy Cross Forest Reserve, without the consent of the state of Colorado, is without warrant of law and in violation of the Constitution of the United States and is wholly void and without any force or effect against this defendant.

Second. Defendant admits that the Secretary of Agriculture has from time to time and under the dates mentioned in the second paragraph of the bill, adopted, revised and publicly promulgated certain rules and regulations purporting to insure the object of the national forest reservations, including the said Holy Cross Reserve, to regulate their occupancy and use, and to preserve the forest thereon from destruction, and that said rules and regulations purport to have been adopted, revised, and promulgated by said Secretary in fulfillment of the duties and in pursuance of the
24 authority claimed by him to have devolved upon him under the laws of the complainant.

Third. Defendant admits that the Secretary of Agriculture has caused to be investigated the effect of excessive grazing of cattle on forest reservations as in the bill alleged, and that, as a result of said investigation he has determined that excessive grazing of cattle is detrimental to said forest reservations.

Defendant admits that among the rules and regulations adopted and promulgated by said Secretary of Agriculture are the regulations numbered 39 to 47, both inclusive, 51-57-60 and 63, recited and alleged in paragraph third of the bill of complaint herein, and that said regulations are of the tenor and effect in said paragraph of said bill alleged, but for greater certainty he begs leave to refer to said rules and regulations and the whole thereof upon the final

hearing of this case. But defendant denies that said rules and regulations were or are enacted or promulgated by the Secretary of Agriculture in the exercise of any lawful authority or otherwise, or in the fulfillment of his official duties or otherwise. And defendant is advised and humbly submits to this Honorable Court that said rules are not reasonable or such as shall insure the objects of the National Forest Reservations. And defendant further humbly submits to this Honorable Court that said rules and regu-
25 lations are an unconstitutional, unlawful and unwarranted interference with the range, grazing and fence laws of the state of Colorado enacted and enforced in the exercise of the police powers of the said state, and that said rules and regulations are wholly void and are without force or effect against this defendant.

Fourth. The defendant admits each and every allegation contained in the fourth paragraph of the bill of complaint; except that he alleges the facts to be that his ranch also embraces parts of Sections thirty-two (32) and thirty-three (33) in township eight (8) south of range eighty-six (86) west; and that for many years last past his dwelling house, barns, corrals and principal feed lots have been and are now situated on said section thirty-two (32).

Fifth. As to the allegations of the fifth paragraph of said bill of complaint this defendant denies that since the year 1906 he has in any manner relied upon the grasses or other growths upon said forest reservation for feed for his cattle or any part of them; denies that any part of this cattle owned by him in 1907 and 1908 have ever acquired any habit of seeking or frequenting any portion of said forest reservation through any act or acts of defendant or at all; denies any unlawful practices on his part; and denies
26 any continued grazing of cattle upon said reservation; but defendant admits each and every other allegation contained in the fifth paragraph of said bill of complaint.

Sixth. The defendant admits each and every allegation contained in the sixth paragraph of said bill of complaint.

Seventh. The defendant admits that in the Spring of 1907 he intentionally and knowingly turned about four hundred of his cattle loose upon the open and unreserved public lands of complainant through a gate on the northerly side of his ranch, without having secured or intending to apply for a permit or authority from the complainant or its Secretary of Agriculture to graze upon the Holy Cross Forest Reserve, and submits to this Honorable Court that he had a right to do so; and defendant admits that he at all times knew that there was then and now no fence separating said Holy Cross Forest Reserve from said unreserved public lands; but defendant denies all and every of the conclusions of law contained in said seventh paragraph of said bill of complaint, and especially denies that any of his acts therein alleged were to his knowledge wrongful or unlawful or that they were in fact wrongful or unlawful; denies that his said acts were contrary to or in defiance of said rules and regulations; denies that more than one-fourth of said cattle were of the same herd he had the year previous; denies that

any of said cattle had been accustomed in previous years
27 or at all to go upon any part of said reservation; denies that he caused or intended or intentionally permitted any of said herd to go directly or otherwise from said unreserved lands to or upon any portion of said Holy Cross Forest Reserve.

Eighth. Defendant denies that when he turned his cattle loose upon the unreserved public lands of complainant, as alleged in paragraph seven of the complainant's bill, he well knew, or that he at all knew, that for the reasons alleged in paragraph eight of said bill or for any reason, said cattle or any appreciable number of said cattle would naturally or otherwise go into said reserve and feed or graze thereon; he denies that there were or are superior grasses or other fodder growing upon said reserve; he denies that his herd or any part thereof had any habit of going upon said reserve; he denies that there was any stream with the only water immediately or conveniently available for their consumption which said cattle could reach and follow up into said reserve; he denies that the only available water for the cattle on said range in the vicinity of his ranch was or is found in East Sopris Creek; and he denies that he then expected and knew or expected or knew that such would be the result of his said liberation of said cattle wtihout supervision or control;
28 but he admits that he took no precaution and did nothing whatever to prevent the entry of said cattle upon the said reservation; and he admits that about one hundred of his cattle during the Summer of 1907 did wander and stray upon said reserve; but he denies that by liberating the said cattle in the manner and under the circumstances in said bill of complaint alleged or otherwise, he, in fact, or in law, knowingly or wrongfully or intentionally or at all caused the said cattle or any part thereof to enter the said reservation; and he submits unto this Honorable Court that when said cattle or any part thereof, in fact did during said Summer of 1907 enter upon said reservation and feed and graze thereon, as in said bill of complaint alleged, such acts did not constitute a trespass upon said unfenced reservation, or a breach of complainant's property or administrative rights therein, or otherwise or at all.

Ninth. Defendant admits the facts alleged in paragraph nine of the bill of complaint, except he denies that he permitted his said cattle to remain on said reservation for the purpose of feeding and grazing thereon, and he denies each and every conclusion of law therein alleged and in particular he denies that any of his acts therein alleged were to his knowledge or in fact or in law, wrongful or unlawful or in disregard of complainant's rights or laws.

Tenth. This defendant denies that he ever threatened or
29 intends, or that he now threatens or intends, or that he has at any time or place, openly or privately, stated that it is his intention or purpose in any manner to cause his said cattle to enter, trespass, feed or graze upon the complainant's said forest reservation during the present year or at any time either in defiance of complainant's laws or policy or rules and regulations or otherwise or at all; but he admits that it is his intention hereafter as heretofore to turn his cattle out upon the unreserved public lands of the

complainant adjoining his said ranch to the northeast thereof without securing or applying for any permit or license from or under the authority of the complainant for said cattle to graze upon the so-called Holy Cross Reserve; and he denies that if the said cattle or any part of them, on account of their straying proclivities, shall wander and go into and graze on the said forest reserve, any damage or injury, permanent, irreparable or otherwise, will in fact result to the complainant; and defendant submits that even if any such damage or injury does result to the complainant, said complainant is and will be without remedy therefor against this defendant, at law or in equity, so long as complainant fails to fence said Holy Cross Forest Reserve as provided by the laws of the state of Colorado.

And defendant further answering says:

I.

30 That in the year 1880 defendant located a homestead on East Sopris Creek, in Pitkin County, Colorado, hereinafter more particularly described, where he now lives, and during twenty-eight years last past has supported himself and his family by raising, buying and selling cattle; which cattle he feeds during the winter and early spring upon hay raised on his ranch and during the summer and fall permits them to graze upon the unenclosed and unreserved public domain of the United States in the neighborhood of his ranch.

II.

The defendant owns in his own right and is in possession of and controls, as his own, about eight-hundred and eighty (880) acres of land in Pitkin County, Colorado, described as follows: The southeast quarter of the northwest quarter, the east half of the southwest quarter, the southwest quarter of the northeast quarter, and the southeast quarter of section thirty-two (32); and the west half of the southwest quarter, and the southeast quarter of the southwest quarter of section thirty-three (33); all being in township eight (8) south of range eighty-six (86) west; and the following lands situated in township nine (9) south of range eighty-six (86) west; the northeast quarter, the southeast quarter of the northwest quarter, the east half of the southwest quarter, and the west half of the south-
31 east quarter of section five (5); and the northwest quarter of the northeast quarter, and the northeast quarter of the northwest quarter of section eight (8). That all of these lands are and have been for more than three years last past enclosed by fences, except a narrow strip lying on the west side of his land in section thirty-two (32), township eight (8) south of range eighty-six (86) west, and about sixty (60) acres in the northeasternly part of his land in said sections thirty-two (32) and thirty-three (33) in township eight (8) south of range eighty-six (86) west; the location of which lands and the exterior fences thereupon are approximately designated on the map hereto attached, marked Exhibit "A" and made a part of this answer. And that defendant's dwelling house,

barns, corrals and principal feed lots are all now and have been for many years past situated in the southeast quarter of said section thirty-two (32), township eight (8) south of range eighty-six (86) west.

III.

That defendant is informed and believes that those portions of the Holy Cross Forest Reserve nearest to his said ranch comprise all of township ten (10) south of range eighty-six (86) west and township nine (9) south of range eighty-seven (87) west, except the eastern tier of sections of said township nine (9), to-wit: what would be sections one (1), twelve (12), thirteen (13), twenty-
32 four (24), twenty-five (25), and thirty-six (36). That the boundaries of said reserve are approximately marked on the said map hereto attached. But defendant believes that no official survey or marking of said reserve has been made. That said reserve is not fenced with a statutory fence or at all, as is required by the laws of the state of Colorado, to protect said reserve against cattle at large.

IV

That to the east and southeast of defendant's ranch are other ranches which are now and have been for more than two years last past, under fence, extending east three or four miles to Snowmass Creek and beyond and extending south and southeast about six miles to the northern limits of said reserve; and defendant's cattle do not enter any portion of the said reserve through the territory east, southeast and south of his said ranch.

V

That adjoining defendant's ranch to the southwest is a chain of ranches under fence extending along East Sopris Creek to within a short distance of the place where East Sopris Creek flows out of said reserve near section fourteen (14), township nine (9) south of range eighty-seven (87) west. That there is a continuous line of fences running from defendant's west fence in section thirty-two
33 (32), township eight (8), south of range eighty-six (86) west to within about a mile from where said East Sopris Creek flows from said reserve. That this chain of fences taken in connection with defendant's fence in said section thirty-two (32), run southwesternly for a distance of about four miles approximately parallel to said creek at a distance of about one-quarter of a mile, and prevent access to said creek by cattle upon the unfenced unreserved lands between said creek and said reserve. That the approximate location of said fences is shown on the map hereto attached.

VI

That northeast of said defendant's ranch is a large body of unenclosed and unreserved public lands of the United States situate in township eight (8) south of range eighty-six (86) west, extend-

ing to Snowmass Creek on the east, to Roaring Fork River on the north and East Sopris Creek on the west, which now and for many years past has constituted the Spring range of defendant's cattle. That said territory slopes gradually to the south and southwest, and upon which territory, owing to its southern exposure and sheltered position, the grasses and herbage appear many weeks earlier in the Spring than upon the country lying to the west and southwest in the direction of said reserve. That said Spring Range is well supplied with water until the middle of Summer so that said
34 cattle are not compelled to go to East Sopris Creek for water. And that for many years past and now, it has been and is the custom of defendant about the first day of April of each year to open a gate in the northeasterly line of defendant's fence at a point situated in the west part of the northwest quarter of the southeast quarter of section thirty-two (32), township eight (8) south of range eighty-six (86) west, and to turn his cattle out through said gate upon the unfenced portion of defendant's lands in the northeastern part of said section thirty-two (32) with the intention that they should go upon the unreserved open public domain lying northeast thereof constituting said defendant's said Spring range and which contains an ample supply of grass and water for defendant's cattle and all other cattle that range thereon during the Spring and early Summer; and defendant submits to this Honorable Court he had and has a right so to do under the laws of the United States and the state of Colorado.

VII.

That prior to the year 1907 it had been the custom of defendant in the early summer of each year to drive his said cattle from off his said Spring range southwesterly from his said ranch upon what is now a part of said Holy Cross Forest Reserve in township nine (9) south of range eighty-seven (87) west, and to keep his said
35 cattle away from the immediate vicinity of his home ranch, not on account of the superior grasses or feed or water upon said territory which is now said reserve, but in order to preserve the grass on the lands near his said ranch for late Fall and early Winter grazing, where said cattle may be within easy reach of defendant in case of storms. That in order to keep his cattle away from his said ranch and upon said territory which is now a part of said reserve, the defendant has been often compelled to make several drivings during each summer. But that since the year 1906 the defendant has not turned or driven his cattle upon said reserve or any part thereof, and has not turned out or driven his cattle in the direction of said reserve or any part thereof; but on the contrary during said years 1907 and 1908, on about the first of April of each year, has turned his cattle out as aforesaid at a place on his ranch farthe*r*est removed from said reserve, to-wit, at said gate in the east part of said section thirty-two (32), upon his own unfenced lands and in a direction leading away from said reserve and into said Spring Range.

VIII.

That to the west and northwest of defendant's said Spring range lies an undulating territory bounded on the south by mountains sloping steeply to the north with sides and tops covered with dense oak scrub, on the nor*t*y by Roaring Fork River, and on the
36 west by Crystal River; all of which territory with the exception of some narrow cultivated strips along the rivers, is open and unreserved public domain of the United States. That this last described territory, together with defendant's said Spring range, has been during the years 1907 and 1908 and is now the usual range of defendant's cattle, and comprises about sixty (60) square miles of unenclosed and unreserved public domain of the United States and contains an ample supply of grass and available water throughout the entire grazing season both for defendant's cattle and all other cattle that have been for two years last past and now are ranged and pastured thereon; and that upon this territory only has it been and is now the desire, purpose and intention of defendant that his said cattle should range.

IX.

That where the north line of defendant's fence crosses East Sopris Creek in the northwest quarter of section thirty-two (32) township eight (8) south of range eighty-six (86) west, there is a mountainous ridge running west and southwest, the top and sides of which are covered with oak scrub, which cattle avoid in the Spring and early Summer. That the west line of defendant's fence in said section thirty-two (32) runs along the southeaster*n*ly exposure of that part of this mountain side running to the southwest, and said
37 fence runs in a southern direction at a considerable distance up the side of the mountain. That the northwestern corner of said defendant's fence is situated on this steep hill side, and that it is difficult for cattle to climb out of the gulch of East Sopris Creek to get around said northwest corner of said fence. That the topography of the land at said crossing is such that cattle crossing East Sopris Creek at or below where defendant's said north fence crosses the same, naturally go down East Sopris Creek, northwesterly towards Carbondale, and not southwesterly towards the said forest reserve. But that in the latter part of May and thereafter some of defendant's cattle do leave said Spring range and climb the hill around the extreme Northwestern corner of defendant's said fence in said northwest quarter of said section thirty-two (32), and range and wander to the southwest along the lines of fences west of East Sopris Creek and enter the said Holy Cross Forest Reserve in the neighborhood of where said East Sopris Creek flows from out of said reserve, at a distance, around the fences, of about five miles from where said gate is situated out of which defendant in April of each year turns his cattle to the northeast for the purpose of having them go on said Spring range, and not upon said reserve. That others of defendant's cattle go northwesterly towards West Sopris Creek, and then stray south and go upon the said reserve in the latter part
38 of May and thereafter. But that in doing so they must necessarily and do traverse a distance of about nine miles

from said gate from which said cattle are turned out by defendant in April. That the elevation of said reserve is so great that snow usually lies upon almost the entire reserve west and southwest of defendant's ranch until after the first of May; and it is not until July that the grazing upon said reserve is good. That no appreciable number of defendant's cattle wander or stray upon said reserve and eat the grasses thereon until the latter part of June, and more than two months after defendant has turned his cattle out upon his said Spring Range northeast of said ranch in a direction away from said reserve. And defendant is advised and humbly submits to this Honorable Court that by the law of the state of Colorado and the Constitution of the United States he is not obliged to prevent his cattle from straying and wandering upon said unfenced forest reserve.

X.

That three hundred (300) of the four hundred (400) head of cattle owned by defendant in 1907, and turned out by him early in April 1907 upon his said Spring range northeast of his ranch, were cattle strange to the country, having been recently b-ought by defendant from a different locality; that the remaining one hundred (100) head were mainly calves and yearlings and had ac-
39 quired no habit of going upon any portion of said forest reserve. That defendant sold practically all of his 1907 herd of cattle in the fall of 1907 and the winter of 1907-8, reserving only a few bulls and breeding cows. That prior to April 1908 he bought about one hundred and seventy-five (175) head of new cattle that are unacquainted with the range around defendant's ranch, and have acquired no habit of going upon any part of said forest reserve. That early in April, 1908, defendant opened his said northeastern gate and permitted his one hundred and seventy-five head of cattle to go northeast upon his said Spring Range; but at the date of the verification of this answer there is not one of said cattle upon any portion of said reserve.

XI.

That since the year 1906 the defendant has never intended or desired nor does he now intend or desire that his cattle should go upon any part of said reserve; and since the year 1906 the defendant has never caused nor does he intend *to* desire to cause his cattle to go upon any part of said reserve.

And further answering the defendant shows to the court that by an Act, approved April 10th, 1885, entitled "An Act Concerning Fences, and to repeal Chapter 39 of the General Statutes of the state of Colorado, entitled Fences", the General Assembly of the state of Colorado defined what should thereafter constitute a lawful
40 fence in said state, and by the second section of said act it was enacted, among other things, that no person or persons should be allowed to recover damages for any injury caused by any animal or animals to any crops or grass or garden products, or other vegetable products, unless his lands, at the time of such trespass or

injury, were enclosed by a legal and sufficient fence, as in said act before described, and defendant further shows to the court that it appears by the bill of complaint herein, and defendant alleges the fact to be, that the lands of the complainant described in said bill of complaint as the Holy Cross Forest Reserve are not nor have they ever been enclosed by any fence, and defendant therefore is advised and insists that the complainant is not entitled to any relief against the defendant touching the matters complained of in its said bill; and this defendant claims the same benefit as if he had pleaded the above statute in this cause.

And this defendant is advised and humbly submits that the complainant has not in its bill of complaint shown any case in equity against this defendant or any matter or thing entitling said complainant to proceed in equity against this defendant, nor is complainant shown in said bill to be entitled to any relief from this Honorable Court; and this defendant accordingly claims the same benefits from this, his answer as if he had pleaded the matters
41 herein stated, or any of them, or as if he had demurred to said bill or to any parts thereof.

And all of the foregoing matters and things set forth in this defendant's answer to said bill of complaint this defendant is ready and willing to aver, maintain and prove as this Honorable Court may direct.

Wherefore, this defendant having fully answered, confessed, traversed and avoided or denied all the matters in the said bill of complaint material to be answered, according to his best knowledge and belief, humbly prays this Honorable Court to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

FRED LIGHT, *Defendant.*

ETHELBERT WARD,
RALPH W. McCRILLIS,
Solicitors for Defendant.

UNITED STATES OF AMERICA,
States of Colorado, County of Pitkin, ss:

Fred Light, of lawful age, being first duly sworn, upon his solemn oath says that he is the defendant named in the foregoing answer subscribed by him, that he has read the same and knows the contents thereof and that the same is true of his own knowledge except as to the matters therein stated on information and belief and as to those matters he believes it to be true.
42

FRED LIGHT.

Subscribed and sworn to before me this 15th day of May, A. D. 1908.

Witness my hand and notarial seal.

My commission expires the 11th day of Feb., A. D. 1911.

[NOTARIAL SEAL.] MANFORD W. SMITH,
Notary Public.

(Here follows diagram marked p. 43.)

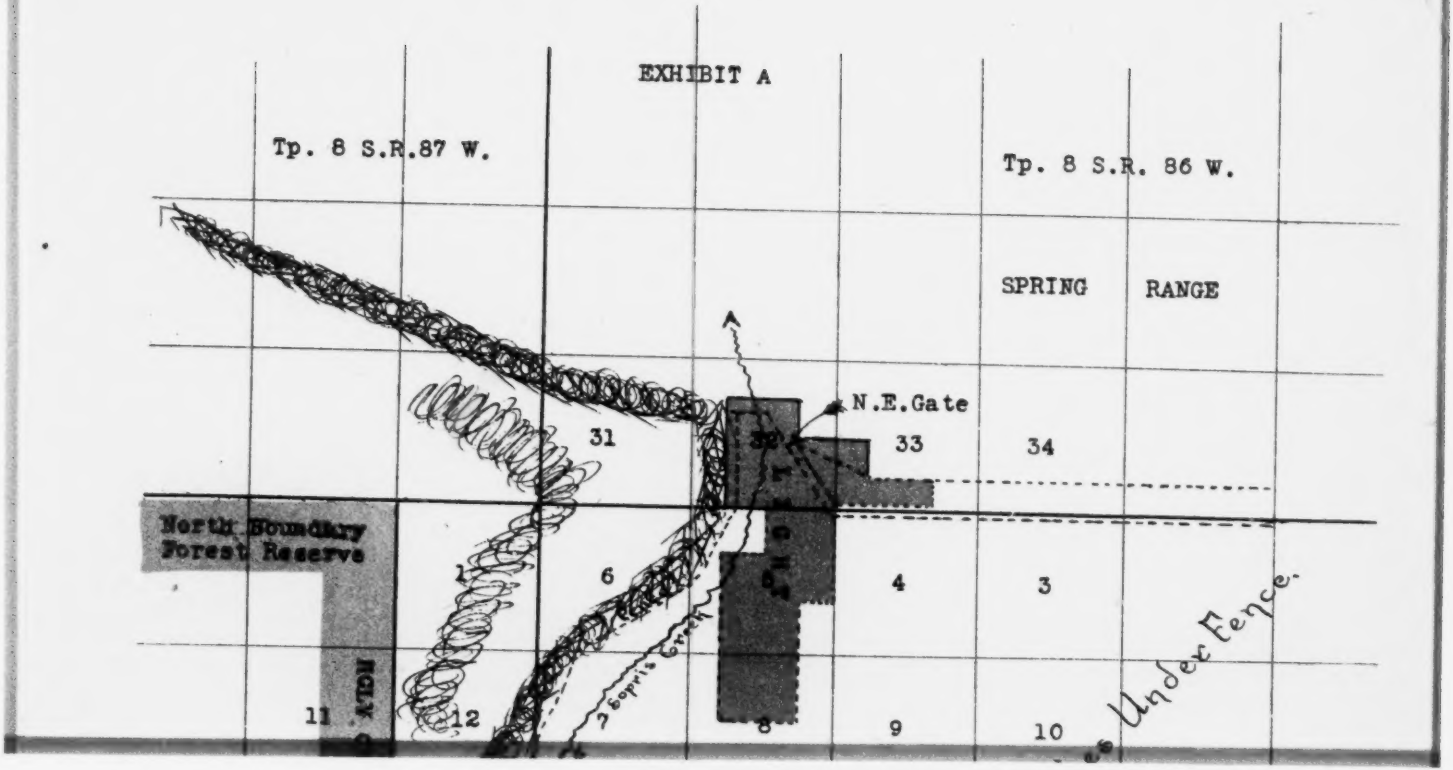
EXHIBIT A
Tp. 8 S.R.87 W.
Tp. 8 S.R. 86 W.
SPRING RANGE
N.E.Gate
North Boundary Forest Reserve
31
32
33
34
1
6
5
4
3
11
12
7
8
9
10
Esprit Creek
Under Fence.

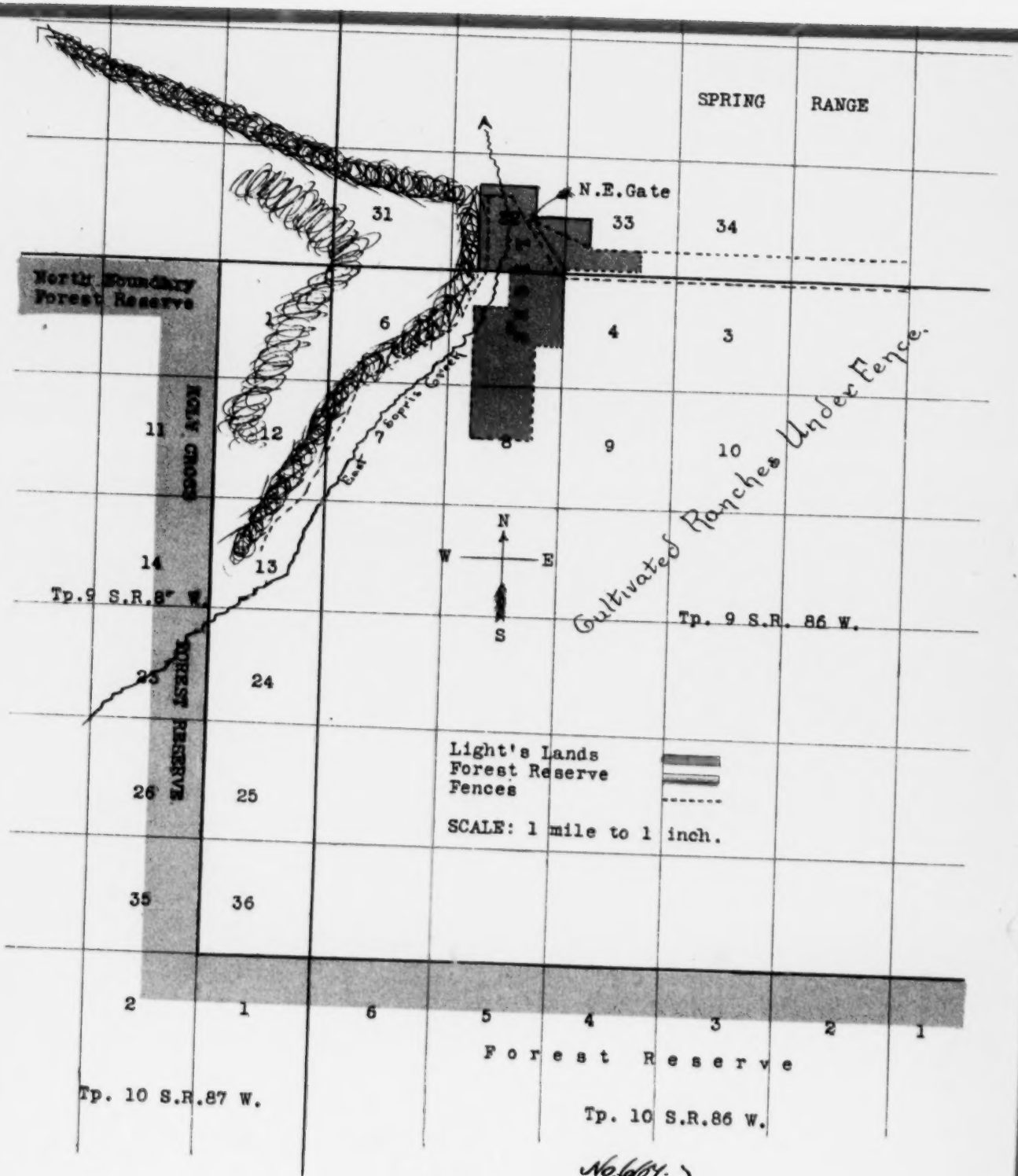

EXHIBIT "A"

No. 667.
Light
v.
U.S.
} p. 43

44 (Endorsed:) No. 5153. In Equity. The United States, Complainant, vs. Fred Light, Defendant. Answer. Filed May 16, 1908, Charles W. Bishop, Clerk. Etherbert Ward, 416 E. & C. Bldg., Denver, Colo. Ralph W. McCrillis, Equitable Bldg., Denver, Colo. Solicitors for defendant.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court of the United States for the District of Colorado.

In Equity. No. 5153.

UNITED STATES OF AMERICA, Complainant,
vs.
FRED LIGHT, Defendant.

Amendments of Bill of Complaint.

Comes now the United States of America, the complainant above named, by its solicitor, and by leave of court in this behalf first had and obtained, brings these its amendments of its bill of complaint herein against the defendant Fred Light, to-wit:

First. The complainant hereby amends its said bill by striking out from the fifth paragraph thereof the words "up the said stream" where the same appear in the first line of the 7th page of said bill, and by substituting for the words so stricken the word "directly."

Second. The complainant further amends its said bill by
45 amending the 7th paragraph thereof so that the same shall read as follows, to-wit:

Seventh. Further complaining, your orator alleges and shows unto your honors that afterwards, and at some time in the spring of the year 1907, and prior to the first of June of that year, the defendant, though well knowing the existence and boundaries of the said reservation, and though thoroughly informed of and well knowing the provisions of the said rules and regulations which forbade that cattle be caused or allowed to graze within the said reservation without a license and permit of the character and authority hereinbefore mentioned, deliberately and intentionally liberated and drove forth from his said ranch a large number, to-wit, four hundred of his said cattle, and wrongfully and unlawfully and knowingly and without having secured or intending to apply for any permit or authority therefor, from or authorized by the complainant or its Secretary of Agriculture, and in intentional disregard and defiance of the said rules and regulations and of the property and administrative rights of the complainant, caused and permitted the said cattle to go directly from the said ranch of the defendant over intervening, unreserved lands of the complainant, into and upon the aforesaid portion of the said reservation heretofore described as lying in said township 9, and to feed, graze and otherwise trespass thereon, there being then and now no fence separating the said reservation

from the said unreserved public land, as the defendant at all times in this bill mentioned well knew.

Third. The complainant further amends its said bill by amending the 8th paragraph thereof so that the same shall read as follows, to-wit:

Eighth. And your orator avers that the grasses and other fodder growing upon any or all of the unreserved lands upon which
46 cattle when liberated or excluded from the said ranch will or do voluntarily go, without herding and driving, have at all times been and are and will continue to be in each and every year, except in early spring, too poor in quality and too meager in quantity to attract or content or adequately to nourish all or any considerable portion of the number of cattle which the defendant now has and controls and purposes to have and control in the conduct of his said business at and near the said ranch; that the water supply upon and accessible from such unreserved lands has been, is, and will be in each and every year, except in early spring, insufficient for all or any considerable number of such cattle; that, on the other hand, in each and every year beginning in the late spring or early in the month of June, the grazing upon the said reservation near to the said ranch becomes good in quality and abundant in quantity for cattle equal or exceeding in numbers the said herd of the defendant and so continues throughout the grazing season, and water there exists at all times sufficient in quantity and quality and of convenient access, to meet the needs of such or any similar herd. And your orator further shows that there are and at all times herein mentioned have been well worn cattle trails leading from the said ranch and the lands adjacent thereto directly into the said reservation, which trails have been formed in the past by cattle of the defendant and of persons other than the defendant maintaining ranches on said Sopris Creek who each year comply with the said laws and regulations of the complainant and cause or permit their cattle to enter and graze within the said reservation under complainant's license, and that because of the existence of such trails and the relative conditions as to feed and water supply in this paragraph set forth, and of such regular and lawful and duly licensed ingress into the said reservation, by such other cattle—all of which facts are and long have been well known to the defendant—it is and will continue to be, as the defendant well knows, natural and inevitable that all or many of the cattle of the defendant will each year when liberated or driven from the enclosures of his said ranch enter the said reservation soon thereafter and
47 there remain grazing and trespassing throughout the grazing season, even though the defendant should not drive or herd his cattle or any thereof directly to or upon the said reservation, and this result is and will be the more natural and necessary because as the defendant well knows and your orator avers, the topography of the region at and about the said ranch is such as greatly to assist the other operating causes and factors aforesaid, in directing cattle from the said ranch and its vicinity into and upon the said reservation.

The defendant pretends that he did not cause any of his cattle to enter or trespass upon the said reservation in the year 1907, as averred in the seventh paragraph of this bill, in this, that he did not cause such cattle to be directly driven or led thereon, but confined his action to the liberation of such cattle upon the said unreserved lands adjacent to the said ranch; but your orator avers that even though such were the truth, the defendant nevertheless at the time of such liberation well knew that by reason of the facts hereinbefore alleged in this eighth paragraph of this bill, and by reason of the aforesaid habit of the said herd of the defendant, such cattle would naturally and necessarily go, as they did in fact go, into and upon the said reservation and feed, graze and otherwise trespass thereon, and yet defendant took no precautions and did nothing whatever to prevent such an unlawful entry and trespass, but on the contrary desired and intended that the said cattle should enter and trespass upon the said reservation and consume the superior grasses and other herbage thereof, in breach of the complainant's property and administrative rights.

Fourth. The complainant further amends its said bill by striking from the tenth paragraph thereof the words "in the same manner hereinbefore alleged," where the same appear in the first and second lines of the tenth page of said bill.

Wherefore, the complainant prays as before was prayed
48 in the original bill herein; and that the said defendant may answer, but not under oath, such oath being hereby waived, according to the practice of this court, all and singular the matters stated and charged in said original bill of complaint, and not hereby, stricken therefrom, and those hereinbefore stated and charged in these amendments thereof.

ERNEST KNAEBEL,
Special Assistant to United States Attorney, Duly Designated by the Attorney General to Conduct the Prosecution of this Cause, Solicitor for Complainant.

(Endorsed:) No. 5153. U. S. Circuit Court, of Colorado. United States of America, Complainant, vs. Fred Light, Defendant. Amendments of Bill of Complaint. Filed Jul. 6, 1908, Charles W. Bishop, Clerk. Ernest Knaebel, Counselor at Law, Equitable Bldg., Denver, Colo.

Saturday, July 11th, A. D. 1908.

At chambers, before the Honorable Robert E. Lewis, District Judge, the following proceeding was had:

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

Upon reading the proposed amendments of its bill of complaint heretofore filed by the complainant and the stipulation of
49 the complainant and defendant permitting such amendments, filed herein May 28th, 1908:

It is, on motion of Ernest Kanebel, Esq., complainant's solicitor; Ordered that the said proposed amendments be, and the same hereby are, allowed to be made as amendments to the said bill of complaint.

Thirty-seventh Day, May Term, Tuesday, July 21st, A. D. 1908.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the fifth day of May, A. D. 1908.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Bill for an Injunction and for Other Relief.

On stipulation of counsel and good cause shown:

It is hereby ordered that the defendant herein file his supplemental answer in the above entitled cause answering amended paragraphs seven and eight of the bill of complaint as a separate document and as an amendment to the answer heretofore filed, and that said answer as thus amended be taken as the answer of defendant to said bill of complaint and amendments thereto filed.

In the Circuit Court of the United States for the Eighth Judicial Circuit and the District of Colorado.

50 In Equity. No. 5153.

THE UNITED STATES OF AMERICA, Complainant,
vs.
FRED LIGHT, Defendant.

The Supplemental Answer of Fred Light, the Defendant, Answering the Amendments of the Bill of Complaint of the United States of America, the Complainant.

Now comes Fred Light, the defendant above named, by his solicitors, and by leave of court first had, brings his amendments to his answer herein, answering the amendments of the bill of complaint herein as follows, to-wit:

First. The defendant amends his answer in the seventh paragraph of the fifth page thereof, for answer to the amended seventh paragraph of the bill of complaint herein, so that the said seventh paragraph of defendant's answer shall read as follows:

Seventh. Defendant admits that during the year 1907 he well knew the existence of said Holy Cross reservation; but denies that he well knew the boundaries thereof. Defendant admits that during said time he was thoroughly informed of and well knew the provisions of said rules and regulations which forbade that cattle be caused or allowed to graze within the said reservation without a license and permit of the character and authority mentioned in the said bill of complaint. Defendant admits that he liber-

51 ated upon the unreserved public domain, a large number of his cattle, to-wit, about four hundred, from his ranch during the spring of said year, without having secured or intending to apply for any permit or authority therefor from or authorized by the complainant or its Secretary of Agriculture, and submits to this court that under the law, he was not required to obtain any such permit or authority for so liberating his cattle from his said ranch; but defendant denies that he deliberately or intentionally liberated or drove forth from his said ranch, any number of cattle, and wrongfully, unlawfully or knowingly or otherwise, or at all, caused or permitted said cattle to go directly or otherwise from the said ranch of the defendant, over intervening or unreserved lands of the complainant or otherwise, into or upon the aforesaid portion of said reservation described in said bill of complaint as lying in said township nine; denies that he deliberately or intentionally or wrongfully or unlawfully or knowingly caused the said cattle or any part thereof to feed, graze, or otherwise trespass upon any portion of said forest reservation; denies that he knowingly or intentionally disregarded or held in defiance any of the said rules and regulations or the property and administrative rights of the complainant; and especially denies that any of his acts therein complained of, were or are wrong-

ful or unlawful. And defendant denies all and every of the
52 conclusions of law contained in the seventh paragraph of the said bill of complaint. But defendant admits that during said time and now there is no fence separating said reservation from the unreserved public land, and that he, at all times in said bill of complaint, mentioned, well knew there was no such fence.

Second. And defendant amends his answer in the eighth paragraph on the fifth and sixth pages of his answer, for an answer to the amended eighth paragraph of the bill of complaint herein, so that the said eighth paragraph of defendant's answer shall read as follows, to-wit:

Eighth. Defendant denies that the grasses or other fodder growing upon any or all of the unreserved lands upon which his cattle when liberated or excluded from defendant's said ranch will or do voluntarily go, without herding or driving, have at all times or at any time or are or will continue to be in each or every year or any part of any year, too poor in quality or too meagre in quantity to attract or content or adequately to nourish all or any considerable portion of the cattle which the defendant now has and controls or proposes to have or control in the conduct of his said business at or near said ranch; defendant denies that the water supply upon or accessible from such unreserved lands has been, is or will be in each or any year, or any part of a year, insufficient for all or any considerable number of said cattle. Defendant denies that in each or any year either beginning late in the spring or early in the month of June, or at any other time, except for a very short period, the grazing upon said reservation near to the said ranch becomes good in quality and abundant in quantity for cattle, equal or exceeding in numbers the said herd of the defendant, or continues through the grazing season, except for a very brief period of the year.
53 Defendant admits that water exists on said reservation at all times and sufficient in quantity and quality and of convenient access to meet the needs of any number of said or any similar herd. Defendant denies that there are now or ever have been at any of the times in said bill of complaint mentioned, well worn cattle trails or any cattle trails whatsoever, leading from the said ranch or the lands adjacent thereto directly into said resercation or otherwise or at all. Defendant denies that any such trails have been formed in the past by cattle of the defendant or of persons other than the defendant maintaining ranches on said Sopris Creek, who comply with the laws and regulations of the complainant or who cause their cattle to enter and graze within said reservation under complainant's license. Defendant denies that because of the existence of such trails or otherwise or because of the relative condition as to feed or water supply, as set forth in said paragraph, or because of said regular or lawful or duly licensed ingress into the said reservation by other cattle, that it is or will continue to be natural or inevitable that all or many of the cattle of the defendant will each year, when liberated or driven from the enclosures of said ranch, enter the said reservation soon thereafter or there remain grazing or trespass throughout the grazing season, or at all. Defendant

denies that the facts alleged in said eighth paragraph of the complaint are or have been long well known or at all known to the defendant; and defendant denies that even though defendant should not drive or herd his cattle or any part thereof directly to or upon said reservation, the result set out in the eighth paragraph is or will be more natural or necessary for the reason of the topography of the region at or about said ranch or for any other reason or at all; and defendant denies that the topography of the region around said ranch is such as will greatly or otherwise assist any alleged other operating causes or factors set out in the said eighth paragraph in directing cattle from said ranch or its vicinity into or upon said reservation; and defendant denies that there are any or have
54 ever been any operating causes or factors directing cattle from said ranch or its vicinity into and upon the said reservation.

Defendant admits that he claims that he did not cause any of his cattle to enter or trespass upon the said reservation in the year 1907 as averred or otherwise or at all, but confined his action to liberating his said cattle upon the unenclosed unreserved public domain adjacent to his said ranch and northeasternly thereof and in a direction away from said forest reserve as is more specifically set out in his further answer herein; and defendant humbly submits to this court that he had a lawful right so to do; but the defendant denies the conclusions of law pleaded in the second portion of the amended eighth paragraph of said bill of complaint and denies that by his said alleged acts he in any manner caused his cattle or any of them to go upon or feed upon any portion of the said reserve. Defendant denies that by reason of the facts set forth in the eighth paragraph of complainant's bill of complaint or by reason of any habit of said herd of the defendant or for any other reason, said cattle would naturally or necessarily go or that any appreciable number of them did in fact go into or upon the said reservation or feed or graze thereon; defendant denies that any of his cattle have ever trespasses on said reserve; defendant denies that said cattle or said herd of cattle belonging to defendant had any habit of going upon said reservation; defendant denies that said cattle made any unlawful entry or trespass upon said reservation; defendant denies that he desired or intended or desires or intends that said cattle should enter or trespass upon said reservation or consume the grasses or other herbage thereof in breach of the complainant's property or administrative rights or at all; defendant denies that there are or have been superior grasses upon said reservation; defendant denies that he took no precautions or did nothing whatever to prevent any kind of an entry or trespass upon said reservation; and defendant denies that there was any unlawful entry or trespass upon said reservation by cattle owned by him either in the manner alleged in said bill of complaint or at all. But defendant
55 submits unto this honorable court that if the said cattle or any part thereof did in fact during said spring or summer of 1907 or at any time enter upon said unfenced reservation or feed or graze thereon as in said bill of complaint alleged or otherwise,

such acts are nor wrongful or unlawful and did not constitute and do not constitute a trespass upon said unfenced reservation or a breach of complainant's property or administrative rights therein or otherwise or at all.

Wherefore this defendant having fully answered, confessed traversed and avoided or denied all the matters in the said amendments of said bill of complaint material to be answered, according to his best knowledge and belief, humbly prays this court to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

FRED LIGHT,
Defendant.

ETHERBERT WARD,
RALPH W. McCRILLIS,
Solicitors for Defendant.

UNITED STATES OF AMERICA,
State of Colorado, City and County of Denver, ss:

Fred Light of lawful age being first duly sworn upon his solemn oath says that he is the defendant named in the above and foregoing amendments to his answer, answering the amendments of the bill of complaint herein, which foregoing amendments are sub-
56 scribed by him; that he has read the same and knows the contents thereof, and the same is true of his own knowledge except as to the matters therein stated on information and belief, and as to those matters, he believes it to be true.

FRED LIGHT.

Subscribed and sworn to before me this 10th day of July, A. D. 1908.

Witness my hand and notarial seal.

My commission expires December 24, 1910.

[NOTARIAL SEAL.] EMILIE L. SEALES,
Notary Public.

(Endorsed:) No. 5153. U. S. Circuit Court of Colorado. United States of America, Complainant, vs. Fred Light, Defendant. Supplemental Answer. Filed Jul. 21, 1908, Charles W. Bishop, Clerk.

UNITED STATES OF AMERICA,
District of Columbia, ss:

In the Circuit Court of the Eighth Judicial Circuit.

In Equity. No. 5153.

UNITED STATES OF AMERICA, Complainant,
vs.
FRED LIGHT, Defendant.

Replication.

57 This replicant, United States of America, saving and reserving to itself all and all manner of advantages of exception

which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, Fred Light, as the same stands amended by the amendments thereof contained in the so-called supplemental answer of the said Fred Light, for replication to the said answer so amended, saith that it does and will aver, maintain and prove its said amended bill to be true, certain and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant as so amended is very uncertain, evasive and insufficient in law to be replied unto by this replicant; without this, that any other matter or thing in the said answer as so amended contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denies, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it hath already prayed.

ERNEST KNAEBEL,
Solicitor for Complainant.

(Endorsed:) No. 5153. In the U. S. Circuit Court for the district of Colorado. United States of America, Complainant, vs. Fred Light, Defendant. Replication. Filed Aug. 3, 1908, Charles W. Bishop, Clerk. Ernest Knaebel, Solicitor for Complainant, 420 Equitable B'ld'g, Denver, Colo.

58 Fifty-ninth day, May Term. Monday, October 5th, A. D. 1908.

Present: The Honorable Robert E. Lewis, District Judge, and other officers as noted on the fifth day of May, A. D. 1908.

Bill for an Injunction and for Other Relief.

In Chancery. 5153.

THE UNITED STATES OF AMERICA
vs.
FRED LIGHT.

Upon consent of both parties hereto by their respective solicitors:
It is ordered that Clifford G. Rowe, Esq., U. S. Commissioner of Glenwood Springs, Colorado, within the district of Colorado be, and he is hereby, appointed special examiner under equity rule 67 to take proof for final hearing on the part of the defendant in pursuance of the rules and practices of this court, orally, at his office in said Glenwood Springs, Colorado.

59 UNITED STATES OF AMERICA,
District of Colorado, ss:

Notice of Election to Take Evidence Orally and of Hearing Before Examiner.

In the Circuit Court of the United States for the Eighth Judicial Circuit.

In Equity. No. 5153.

UNITED STATES OF AMERICA, Plaintiff,
vs.
FRED LIGHT, Defendant.

To the above named defendant, and to Ethelbert Ward and Ralph W. McCrillis, his solicitors:

You, and each of you, will take notice that the plaintiff in the above entitled cause desires and has elected that the evidence to be adduced therein be taken orally, and further that I shall proceed to take proof for final hearing on the part of the plaintiff under the sixty-seventh Rule of the Supreme Court for courts of equity, as amended, and in pursuance of the rules and practice of this court, orally, before Sanford C. Hinsdale, Esquire, an Examiner of this court, at his office No. 803 Continental Building, in the City and County of Denver, Colorado, on the 23d day of September, 1908, at the hour of ten o'clock A. M.

You are invited to attend and cross-examine all witnesses produced in behalf of the plaintiff. The examination will be adjourned from day to day and to such time and place as may be required, without further notice.

60 Dated, Denver, Colorado, September 16th, 1908.

ERNEST KNABEL,
Solicitor for Plaintiff.

Due service of the foregoing notice is hereby accepted at said City and County of Denver this 16th day of September, A. D. 1908.

ETHELBERT WARD,
RALPH W. McCRILLIS,
Solicitors for the Above-named Defendant, Fred Light.

UNITED STATES OF AMERICA,
District of Colorado, ss:

In the Circuit Court of the United States Within and for the District of Colorado.

In Equity. No. 5153.

UNITED STATES OF AMERICA, Complainant,
vs.
FRED LIGHT, Defendant.

Be it remembered, that on the 24th day of September in the year of our Lord one thousand nine hundred and eight, in pursuance of a notice and proof of service thereof hereto attached, the parties to the above entitled cause appeared before me, Sanford C. Hinsdale, Examiner in Chancery of the Circuit Court of the United States for the district of Colorado, at my office 803 Continental Building in the city of Denver, state of Colorado; the complainant in said cause by Ernest Knaebel, Esq., and the respondent by Ethelbert Ward, Esq.

61 And on the said 24th day of September, and on the succeeding days to which the taking of evidence herein was successively adjourned, as hereinafter stated, came also before me John McLaren, W. S. Copeland, Harry H. French, Gideon Cookman, N. S. Ashlock, Frank A. Powell and Jay Burdick to testify as witnesses on behalf of the complainant; and the said witnesses having been by me first duly cautioned and sworn according to law respectively, to testify the truth, the whole truth, and nothing but the truth in the matter and suit in controversy aforesaid, were severally examined before me on oral interrogatories propounded to them respectively by counsel, as in their several depositions fully appear, that is to say;

It is hereby stipulated and admitted by the defendant herein that all of the cattle mentioned in his answer as the same now stands, or hereafter shall be amended, are cattle over which he, the defendant, has and exercises control.

By Mr. WARD: The defendant objects to any testimony to be given in this cause on behalf of complainant, for the reason that the bill of complaint herein, and the amendments thereto, do not entitle complainant to the relief prayed for, or to any relief in equity. This objection to go to the present witness and all other witnesses on behalf of complainant.

JOHN MCLAREN, a witness produced on behalf of the complainant, being duly sworn testified as follows:

62 Direct examination.

By Mr. KNAEBEL:

Q. Your name is John McLaren?
A. Yes, sir.

Q. You are the Deputy Forest Supervisor of the Holy Cross Forest?

A. Yes, sir.

Q. And you live and have your official head-quarters at Glenwood Springs, Colorado?

A. Yes, sir.

Q. How long have you lived in that vicinity?

A. I moved my family there March 2nd of this year and have lived there continuously ever since last summer; that was my place of residence, although my family wasn't there until March 2nd, 1908, but between July 15th and November 5th that was my head-quarters, although my family wasn't there,—1907.

Q. Do you know the defendant, Fred Light?

A. Yes sir.

Q. Do you know the situation of his ranch, and the boundaries thereof?

A. Yes, sir.

(Paper marked by the Examiner "Exhibit 1, Complainant's Proofs")

Q. I show you a map marked "Exhibit 1" and ask you to state whether you prepared it?

A. Yes, sir.

Q. And from what data?

A. From the approved plats on file in the Glenwood Springs Land Office.

Q. Does the Glenwood land district cover all of the territory and region appearing upon that map?

A. It does.

63 Q. When did you make the map?

A. About the 1st of July, 1908, the exact date I am not quite sure of.

Q. At all events, since the beginning of this suit?

A. Yes, sir.

Q. Did you indicate upon that map all of the lands in the townships appearing upon it which have been entered or filed upon, according to the records of the Register in the Glenwood Land Office?

A. Yes, sir, everything shown in these townships is the patented land on record.

Q. That is not a direct answer to the question. I asked you if you indicated upon the map all of the lands which have been entered or patented in the townships which the map revealed?

A. All which are patented. Of course the plats in the Land Office records filing might not appear.

Q. Did you give everything that appears of record in the office of the Register?

A. Yes, sir.

Q. And the lands that appear to have been entered or patented by private individuals are marked in what color upon the map?

A. Yellow.

Q. Did you mark upon that map the boundaries of the Holy Cross Forest?

A. Yes sir.
Q. Where they appear in the region covered by it?
A. Yes sir.
Q. And how are those boundaries marked?
A. The Forest boundary is marked with a green line.
Q. Is Mr. Light's ranch specially designated upon that map?
A. Yes sir.
64 Q. How?
A. By a black boundary line.
Q. The courses of the streams as appearing upon this map, according to their designations are they approximately correct?
A. Yes sir.
Q. Please explain what these dotted lines marked "trail" are?
A. This is a trail running nearly west and then turning north into the Forest boundary, near the northeast corner.
Q. You are now referring to the more northerly of the two lines marked "trail"?
A. Yes sir.
Q. And the southerly of the two lines marked "trail" also passes, does it, from the vicinity of Mr. Light's ranch into the Forest?
A. Yes sir.
Q. Did you plat them from observations upon the ground?
A. Yes sir.
Q. Are you acquainted with the country that is covered by that map?
A. Yes sir.

Mr. KNAEBEL: We offer that map in evidence (referring to Exhibit 1).

Mr. WARD: We object to the map and the trail marked thereon as not being binding upon defendant; and also object to the map as not being an official map that would be binding upon any one, and that there is nothing in the testimony to show that the map is accurate and correct as far as the patented lands were concerned and the exact location thereof.

A. I understood you to say that the private lands are designated on that map in yellow?
A. Yes sir.
Q. I will now ask you whether they are marked on that
65 map in accordance with the legal subdivisions as they appear in each instance in the records of the Register in the Land Office at Glenwood Springs?
A. They are.
Q. You did not, then, make a survey on the ground of each of these entries or patented tracts?
A. No, sir.
Q. But you laid them down upon this plat in accordance with the legal subdivisions as the entries appear in the office at Glenwood Springs?
A. Yes sir.
Q. And all of them?
A. Yes sir.

Q. How many times have you visited Mr. Light's place?
A. During last summer, and since then about four times, I think.
Q. When did you go there last year?
A. I was there on August 28th, 1907.
Q. Did you see Mr. Light then?
A. No, sir.
Q. What was the occasion of your visit?
A. I was there as Supervisor looking over the range in respect of certain cattle.
Q. Did you go to the ranch itself?
A. I went to the western boundary of the ranch.
Q. And where else did you go?
A. We rode over a large portion of the range on Sopris Creek and Capital Creek.
Q. Did you go up into the Reservation?
A. Yes sir.
Q. Did you find any of Mr. Light's cattle?
A. Yes sir.
Q. Where were they?
A. They were in what is knows as Hay Park, most of them.
66 Q. You will state as nearly as you can where Hay Park is with reference to public subdivisions?
A. Hay Park would be located approximately in section 14, town 9, range 87.
Q. Within the Reservation, the Holy Cross Reservation?
A. Yes sir.
Q. How many of Mr. Light's cattle did you find there?
A. I found twenty-three head of range stock and one bull.
Q. Did you find any horses?
A. We found eleven head of horses.
Q. How did you know that they were his, the cattle and the horses?
A. By the box L. brand.
Q. Will you please mark upon the minutes of the stenographer a facsimile of the box L. brand for subsequent transcription into the transcript?

(Witness does as requested, viz: L

To avoid delay in further proof on the matter defendant admits that during the year 1907 all cattle branded box L. were owned by him, and that the brand is still his property.

Q. Is that all of the cattle of Mr. Light that you saw upon the Forest Reserve that year?
A. Yes sir.
Q. Did you give him any notice that year to remove the stock?
A. No sir.
Q. You knew, however, officially that he had been previously notified?
A. Yes sir.

Mr. WARD: We object to the last answer and move to have it stricken out on the ground that it is hearsay.

Mr. KNAEBEL: Counsel for complainant states his intention to prove by another witness that such notice was, in fact, given.

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Q. Now you went there again during the present year?
A. Yes sir.
Q. When did you go the first time?
A. On the 19th day of May.
Q. With whom?
A. In company with Mr. French.
Q. The Supervisor?
A. Yes.
Q. Did you go to the defendant's ranch?
A. We went past the defendant's ranch right along the boundary lines, not inside to the house.
Q. And then where did you go?
A. During that day and the next, the 20th, we rode the range between East Sopris Creek and Roaring Fork examining as to the character of the range, the location of water, and location of stock.
Q. Do you refer to the region appearing upon Exhibit 1 as vacant public lands to the northeast, north and northwest of the Light ranch?
A. Yes sir.
Q. And lying between the two creeks referred to?
A. Yes sir.
Q. What was the character of the country, of the grass, and the nature and extent of the water supply as you found it?
A. The country is principally mountainous, in many places cliffs, in fact, and very rocky, and toward the east is more rolling but steep. It is principally covered with sage-brush, oak, piñon, and cedar. There is a small quantity of forage grass which I should call blue-stem.

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Q. As you go to the northwest from Mr. Light's ranch does the country become more rough or less?
A. More rough and abrupt.
Q. State as nearly as you can in what sections that portion of the country is available for the pasture of cattle; that is, is smooth enough and accessible enough for cattle to range upon readily.
A. As to area, do you mean?
Q. No, state by sections approximately.
A. (Witness referring to plat.) The best part of it would come in approximately section 28.
Q. And the rest of the vacant land comprised within the region of your visit is of what character?
A. As previously described it is mountainous and steep.
Q. Well, is it accessible at all throughout the northwesterly part of it?
A. It is not easily accessible, you can get at it of course.
Q. But difficult of access?
A. Yes sir.
Q. Have you had some experience in the cattle business?
A. Yes sir.

Q. Prior to your employment by the Government?
A. Yes sir.
Q. And such as to acquaint you with the value of fodder, and the character of ranges for cattle?
A. Yes, sir.
Q. You will please, then, state in regard to the region you have just referred to lying to the northeast, north and northwest of Mr. Light's ranch; what, in your opinion, is its value as a range for cattle, and how many cattle, in your opinion, it would be capable of supporting?

69 Mr. WARD: We object to the question on the ground that it is incompetent, immaterial and irrelevant; and on the further ground that he has not shown any qualification to judge the *the* range in this particular neighborhood.

A. This portion of the range as described is not suited to cattle grazing except it might be at a very short period in the early spring; this is true owing to the complete lack of water on the range, except fed by snow or heavy rains; it would be necessary for cattle to go down to East Sopris Creek from this range, or to go further down on Capital Creek in order to get to water, and the character of the country is such that the cattle do not range in that way; they stay where there is water on the range; which would make it worthless as a cattle range.
Q. What was the condition of the grass on this particular portion of the region shown by the map during the time of your inspection of it, last referred to?
A. In May there was a small amount of blue-stem there which cattle would graze upon.
Q. Was it thick or sparse?
A. Rather sparse.
Q. Did you see any cattle upon it?
A. No sir.
Q. Did you visit that region again?
A. No sir.
Q. Now state, if you know, whether the lands marked upon the map in yellow, and thereby designated as private lands, are, as a rule, fenced?
A. Yes sir.
Q. So that cattle could not enter upon those regions marked in yellow upon the map, from without?
A. No sir.

70 Mr. WARD: We object to the question and answer relating to the land designated in yellow being, as a rule, fenced, for the reason that the term "as a rule" is too indefinite and uncertain.

Q. Are you acquainted with the facts with reference to the fencing of these private lands?
A. Yes sir.
Q. Been around them?
A. Yes sir.
Q. Now state, please, whether they are fenced or not?

A. That particularly refers to the west lines of the patented ground on East Sopris Creek from Mr. Light's place south, I have been along all these ranches and find them fenced. The survey line was not run to determine accurately the location of those fences, but the fences follow generally the course of the patented land as shown on this map.

Q. Now if cattle were turned out at the northeasterly side of Mr. Light's ranch they would at once go upon what character of country?

A. Cattle turned out to the northeast?

Q. Yes, the northeasterly portion of it, how would the slope be?

A. The slope, it would be a south slope, quite steep, the cattle would go up gulches if they were herded to the northeast.

Q. Is the country cut up there?

A. Yes, sir.

Q. Is it fertile, or barren?

A. It is not very fertile; the soil is not very deep.

Q. And supports, I believe, as you said a very sparse growth of grass?

A. Yes sir.

71 Q. Has your business as supervisor brought you in contact, and does it bring you in contact continually with cattle men?

A. Yes sir.

Q. And are you obliged to ascertain and know in your official capacity about the habits of cattle, and the value of ranges?

A. Yes sir.

Q. And have you made a study of those things?

A. Yes sir.

Q. Prior to your appointment as an assistant supervisor, I believe you stated you were in the cattle business?

A. Not in the cattle business, no, sir, associated with cattle.

Q. And doing what kind of work?

A. Riding for cattle.

Q. Rounding them up?

A. Yes sir.

Q. For how long a time did you do that kind of work?

A. That would be pretty hard to tell; at different times I have worked at it I should judge six months.

Q. So you feel that from what you learned you are able to express some opinion concerning the value of a range?

A. Yes sir.

Q. And have you made some study and observation concerning the value of different kinds of fodder, grasses?

A. Yes sir.

Q. You say this is blue-stem that grows sparsely in the region referred to northeast of the ranch?

A. Yes sir.

Q. What happens, if you know, to that kind of grass during the hot weather?

A. During the hot weather without moisture it will dry up.

Q. Do you know whether in this particular region it does dry up?

72 A. Yes sir.

Q. Each year?

A. For the past two years it has.

Q. The present season, by the way, the past summer, by the way, was an unusually wet or dry one?

A. It was unusually wet; during August we had a great deal more rain than usual.

Q. Now you will please describe the place or places where water is accessible to cattle which might be turned out from Mr. Light's ranch on its northeasterly side?

A. The cattle could not reach water without going either to the East Sopris Creek, north of Mr. Light's ranch——

Q. How far north?

A. Why right along his north fence line where the creek leaves the ranch.

Q. Below that on Sopris Creek what is the character of the cañon or gulch which it traverses?

A. It is rather narrow; the mountain to the south is very steep, covered with sage brush, oak and cherry trees.

Q. Well, is the creek accessible at other points, or at all readily accessible at other points northwesterly from Mr. Light's except at the place you have mentioned, near to his north fence?

A. Yes sir, cattle can go right down the creek.

Q. Is there any grass to be found there throughout the grazing season?

A. On the hill south of the creek there is some forage.

Q. In your opinion how many cattle would the vacant public lands to the northeast, north and northwest of Mr. Light's

73 place so far as East Sopris Creek on one side and the highest accessible point that they would reach upon the other—how many cattle could be supported throughout the grazing season in that locality?

Mr. WARD: We object to the question for the reason that the witness has not qualified himself in any particular to give an opinion as an expert, or even as a cowpuncher, upon the question of the range and the number of cattle supported; his qualifications being in answers of yes and no to the leading questions of complainant's solicitor, and his experience by his own testimony being shown to have been six months riding for somebody somewhere, I dont know,—somewhere not shown.

A. I should judge that by constant herding, having a herder with the cattle, that fifty or sixty head might be supported on that range.

Q. Adequately?

A. Yes, sir; not to keep them in fine shipping shape.

Q. What would you have to do with them in the way of herding?

A. They would drift down to the water themselves, but in order to have them stay on that range it would be necessary to drive them back.

Q. Why is that?

A. For the reason that the country is rough and not well adapted to cattle grazing, and they can drift to better range.

Q. Now please state how and why they would drift to better range?

A. Cattle will graze where they can get water close to the range, and these well defined cattle trails leading up the mountain there are easily followed by cattle, and when once located on the
74 higher ranges where there is both feed and water they do not drift down toward the creek.

Q. Now please compare the range in this region that we have been referring to, which would be accessible, directly accessible from the northeast of Mr. Light's ranch, with the range to be found upon the forest,—in the region of the forest shown upon the map Exhibit 1.

Mr. WARD: We object, for the reason that, as before stated, he has not qualified himself to express any opinion or judgment on the question; and for the further reason that he has not stated that he has made any examination or knows anything about any other portion of the range except around East Sopris Creek north and northwest of Mr. Light's ranch.

Q. Have you been over the forest, the portion of it that appears upon that range?

A. Yes sir.

Q. How many times?

A. Four times.

Q. Have you examined it carefully?

A. Yes sir.

Q. Now you may answer the preceding question.

A. The character of the forage in this higher country inside of the forest is different and better suited to cattle; it consists of bunch grass and wild oats; there is plenty of timber feed such as wild peas, etc., and is well watered. The range north which has been referred to here before is not well watered and does not contain the feed that the other area does.

Q. Now you may tell about the trails that you have re-
75 ferred to, where they run from and how well defined they are, and where they go to. Are those the trails—I will ask you first—that appear upon the map marked as such?

A. Yes sir, the trail which is farthest north here leaves Sopris Creek at the northwest corner of Mr. Light's place, runs in rather a westerly direction toward the northeast corner of the Holy Cross forest where it strikes a small creek and follows up into the forest along that creek. There is also a trail running approximately south along Mr. Light's place toward the forest, and this trail is joined by another at a point at the southwest corner of Mr. Light's place, where it joins the Finley ranch; these two trails converge, and the main trail runs approximately a little south and a little southwest across the boundary line of the forest and up into Hay Park.

Q. Now state whether or not there are any fences along the course of that trail, and describe them, if there are?

A. The first trail mentioned does not come close to the fences except at the starting point, Mr. Light's northwest corner, but the trail running south from that point follows along the western line of Mr. Light's place, and the further south it goes the further it converges from the fences from the southwest corner of Mr. Light's place.

Q. What is the character of the country on the west of that trail immediately west with respect to its being steep or not?

76 A. The mountain is quite steep, although it is rolling; the course of the trail, however, does not go straight up the mountain but follows along an easy grade.

Q. Is there anything about the topography there or the situation of the fences, or both combined, which would or would not tend to keep cattle going on that trail?

A. The location of the fences along Mr. Light's boundary line would keep the cattle along that course, and the topography of the country is such, after leaving that, that it is natural for cattle to drift along the course of the trail.

Q. Well, state what you have to say as to whether the trail is the easiest way in which cattle would go——

A. It is.

Q. (Continuing:) —from Mr. Light's place from the southwestern part of it?

A. It is; the tendency of the cattle to follow this trail is due to another reason also; there is no water available along the fenced portion of these patented claims here, and cattle follow this trail across the boundary line there in Hay Park and that vicinity where there is plenty of feed and water.

Q. Where is the available water for the cattle, in the forest?

A. Yes sir.

Q. And none outside of it?

A. There is a few seep holes, southwest from Mr. Light's place there are two seep holes which afford a very small amount of water.

Q. During what times of the year?

77 A. Well, May and June, and possibly not entirely dry in July.

Q. Did you visit it later than July, this region?

A. No.

Q. When was your next visit?

A. The last time I was at this place was in June.

Q. This year?

A. Yes sir.

Q. You stated that you visited it last year in August?

A. Not this particular point where these seep holes are.

Q. Did you find any cattle of Mr. Light's in the reserve during the present year?

A. Yes sir.

Q. State the time and circumstances, and number of cattle and situation?

A. On June 5th I examined the range west and south of Mr.

Light's ranch along East Sopris Creek and within the Holy Cross Forest. The exact number of cattle which I saw branded "Lazy V. T. or "Lazy Open A. T" (that is the same brand that may be read in two different ways), namely ≻|; also cattle branded "U. slash U," namely, $^{U}/_{U}$. I cannot give without referring to notes taken on that day.

Q. You may do so.

A. (Witness referring to note book.) Fourteen head of cattle in the forest.

Q. What date was that?

A. June 5.

Defendant here admits that all cattle which the evidence may show were found in or in the vicinity of the Light ranch, or the Holy Cross Reserve east thereof during the summer of 1908 branded U. slash U, or Lazy V. T. were and are cattle under the control by the defendant.

78 Q. Mr. McLaren, were these cattle you have last referred to upon the lands of the Government, within the forest reservation?

A. Yes sir.

Q. And about what portion of the reservation, stating approximately?

A. They were located along the East Sopris Creek and in the Hay Park country.

Q. Could you designate it approximately here where the section would fall if that were surveyed?

A. I should say approximately section 14 and section 22; that is unsurveyed country up there, and that is approximately——

Q. What township?

A. Township 9 south range 87 west.

Q. Upon what other occasions, Mr. McLaren, have you found cattle of the defendant within the reservation on Government land?

A. On September 6th I made another examination of this same territory and found eleven head of "U Slash U" and two head of "Lazy V. T."

Q. That makes two occasions in the year 1908 when you found cattle of the defendant within the reservation?

A. Yes sir.

Q. On Government land, were they?

A. Yes sir, within the——

Q. Within the reservation?

A. Within the reservation.

Q. Were there any other occasions?

A. No, sir.

Q. Now who went with you on the first occasion?

A. I was accompanied by supervisor French and ranger Burdick.

79 Q. Did you go there to search for Mr. Light's cattle?

A. Yes sir.

Q. Did you all stay together or did you separate for the purpose of counting?

A. We all rode quite close together, within touch of each other.

Q. And all counted the same cattle?

A. Yes sir.

Q. That was the first visit that year?

A. Yes sir.

Q. Now on the second occasion in September whom did you go with?

A. I was accompanied by ranger Powell.

Q. Do you know whether Mr. French and Mr. Ashlock went along on that occasion?

A. Mr. French and Mr. Ashlock and Mr. Arnold and Mr. Burdick covered another portion of the range on that date.

Q. Do I understand you to mean that on that occasion while you were counting cattle within the reservation these other gentlemen you have named as covering another portion were out of sight——

A. Yes sir.

Q. (Continuing:) —so that the cattle you counted were not counted by them?

A. Yes sir.

Q. Nor the cattle they counted, counted by you?

A. That is correct.

Q. Do you know who the former owner of the "Lazy V. T." cattle was?

A. It belonged to Mr. Ed Stauffacher.

Q. And where was Mr. Stauffacher's ranch?

A. It is located near the town of Katherine on the Colorado Midland Railway.

Q. How near is that to Mr. Light's place?

80 A. Approximately fourteen miles.

Q. Can you state whether these cattle branded "Lazy V T" had ranged on the reserve or in that immediate vicinity that we have been referring to, during the grazing season of 1907?

A. No sir, they did not graze in this vicinity of the Holy Cross forest.

Q. So that they were cattle strangers to the country?

A. Yes sir.

Cross-examination.

By Mr. WARD:

Q. Mr. McLaren, where were you born?

A. I was born in Matanzas, Kansas.

Q. When did you come to Colorado?

A. In the year 1879.

Q. In what part of Colorado have you lived?

A. In Huerfano County, southern part, Pitkin County and Garfield and Chaffee County.

Q. How old were you when you came to Pitkin County?

A. I was fourteen or fifteen years old.

Q. How old are you now, Mr. McLaren?

A. I am thirty-two.
Q. How many years have you lived in Pitkin County?
A. Thirty, I should say; I was born in '78, this is 1908.
Q. How many years have you lived in Pitkin County?
A. Fourteen or fifteen years.
Q. Is that continuous, or did you go to Chaffee County?
A. I was in Chaffee County; during that time I was in Chaffee County for six months as near as I can tell.
81 Q. And I believe you said in your direct examination that you had ridden after cattle for six months?
A. Approximately.
Q. And that is the extent of your experience in the cattle business?
A. That is the extent of my riding; I have been associated with cattle in cattle countries.
Q. In the towns or in the country?
A. Both.
Q. But your riding was confined to six months?
A. Practically.
Q. Was it four months, or was it six?
A. Approximately six months.
Q. For whom did you ride?
A. I rode for Robert Reed.
Q. Where?
A. On Brush Creek, Lime Park.
Q. What county was that?
A. That was in Eagle and Pitkin counties.
Q. How far from Fred Light's ranch, or approximately?
A. I should say thirty miles.
Q. When was that; approximately, I don't care for exact dates.
A. 1904 and '5 I think.
Q. Now for whom else did you ride?
A. Anthony Sneve.
Q. Where?
A. The same country.
Q. At what time?
A. During the same year.
Q. So during the six months of your cattle experience in riding you worked for three different men?
A. I did, two of whom I have named; I worked for a man by the name of Caldwell also.
Q. And you are familiar with the cattle business in the Roaring Fork Valley are you?
A. Not particularly; I never spent much time on the range in the Roaring Fork Valley.
82 Q. That is, I mean the valley where Fred Light's ranch is situated.
A. Yes sir.
Q. You are, not particularly familiar with the cattle business there?
A. Not prior to the time of my entering the service.

Q. When did you become familiar with the cattle business in the neighborhood of Fred Light's ranch?

A. In 1907.

Q. And how many times were you over there in 1907 in the vicinity of Fred Light's ranch?

A. Once.

Q. And that familiarized you with the conditions from that one visit, did it?

A. Yes sir, I made a pretty thorough examination.

Q. Up to that time you didn't know the number of cattle that had been grazing in that valley?

A. I knew approximately the number at that time.

Q. At that time, in 1907 and '8?

A. Yes sir.

Q. But you have no knowledge of the number of cattle that had been grazing there before that, six or eight years before that?

A. No sir not six or eight years.

Q. And you have no idea of the carrying capacity of the section of the valley between, say, ten miles below Aspen and Carbondale, have you, any idea how many cattle it will support?

A. No sir.

Q. Are you aware of the fact that there used to be three times as many cattle in that country as there is now?

A. No sir.

Q. Never heard of that?

A. No sir.

83 Q. You don't know about that, do you?

A. No, sir.

Q. Now when did you begin to study grasses and herbage and cattle feed?

A. General observation of cattle feed, dates back a good many years ago, such as I have been able to get from the ranchmen.

Q. Do you remember seeing considerable cattle in that valley in years past?

A. In the Roaring Fork Valley?

Q. Yes.

A. No sir.

Q. Never have seen many cattle there?

A. No sir.

Q. And is it your opinion as an expert, as qualified by you, that that valley can support very few cattle?

A. No sir, it will support quite a number of cattle.

Q. Taking the Roaring Fork valley from the mouth of Crystal River to about ten miles below Aspen, up as far as the forest reservation, is that territory capable of supporting any considerable number of cattle?

Mr. KNAEBEL: This is objected to, since it leaves wholly in doubt whether the question intends to include the school lands that are in private ownership and fenced, and not subject to the use of cattle turned loose upon the open range.

Q. Do you understand what I mean by "range"? You are a cattle man.

A. I think so.

Q. Does that mean land under fence?

A. That might be land under fence.

Q. That is your understanding of a range, cattle range?

84 A. There are cattle ranges under fence.

Q. That is your understanding of a cattle range, as a cattle man—land under fence?

A. I understand it both ways.

Q. I will modify my question by stating that a range means land not under fence. Now answer the question.

A. I will answer the question to the best of my ability; it is very indefinite since the question states ten miles below Aspen to the forest boundary; the forest boundary does not go down across the Roaring Fork valley ten miles below Aspen; the Roaring Fork valley is very greatly taken up by patented claims and certainly would not support a great amount of cattle since there isn't much range open.

Q. How does the range, the grass and feed upon the territory adjoining Fred Light's ranch north and northeast and northwest of him, compare with the open range upon unreserved lands in the Roaring Fork Valley from Crystal River up to about ten miles south of Aspen?

Mr. KNAEBEL: That is objected to as utterly irrelevant, incompetent and immaterial.

A. A close examination has been made of the range adjacent to Mr. Light's ranch, while only general observation has been made of that along the Roaring Fork valley.

Q. What is your answer, you don't know?

A. I should say that the Roaring Fork valley range is better watered than the range adjacent to Mr. Light's, making it a

85 better range.

Q. Do you mean the portion of the valley northwest of Mr. Light's or northeast of Mr. Light's?

A. I am speaking in general of the range north, northeast and northwest of Mr. Light's as being East Sopris Creek and the Roaring Fork.

Q. And you say that is a poorer range than the rest of the valley?

A. It has poorer water at any rate.

Q. How about the grass?

A. I haven't made a minute examination of any other portion of the range in the Roaring Fork valley.

Q. Did you ever make any examination, minute or otherwise, of grasses in other portions of any other ranges?

A. Yes sir.

Q. Where?

A. In the Frying Pan and tributaries.

Q. When?

A. In 1906, and last summer coming under my duties as acting supervisor, I examined some ranges up about Red Cliff and about Eagle.

Q. These were not forest trespass cases were they?
A. No, sir.
Q. How does the Frying Pan range compare with the Roaring Fork range?
A. It is a better range.
Q. You made a particular examination in reference to the water, you say?
A. Yes sir.
Q. How far is it from water, from the middle of the unreserved public lands north of Fred Light to available water, by referring to the map?
A. The way cattle would travel?
86 Q. I didn't ask you about that, I asked you how far it is to water?
A. You want an air line direction?
Q. Yes, of course, then we can get the other afterwards?
A. Approximately a mile and a mile and a half.
Q. How far would it be for a cow standing in the middle of that area mark between Roaring Fork and East Sopris Creek north of Mr. Light's ranch,—how far would the cow have to go to get to water, approximately?
A. Approximately two to two and a half miles, I should judge.
Q. Depending how she walked?
A. Depending on the trails as they exist.
Q. You have no trails marked on that map?
A. There are no very well defined trails over the mountain.
Q. How far does your experience as a cow man teach you that a cow may go for water each day without hurt, without damage to the cow?
A. Cattle ordinarily water every day.
Q. Yes. Now do you understand the question?
A. I think so.
Q. (Question read by the stenographer).
A. It does not teach me that stock can go without water without hurt.
Q. Is that your answer?
A. Yes sir.
Q. (Question again read by stenographer).

Mr. KNAEBEL: I object to that question as being ambiguous, it appears to me—How far can a cow go without water without damage to the cow. The witness has answered that question.
Mr. WARD: That is not the question.

87 Q. (Question again read by the stenographer). I will repeat the question in another form. How far can a cow go for water without damage to the cow?
A. She can be taken a considerable distance if handled properly, driven slowly?
Q. I didn't say driving.
A. You asked how far a cow could be taken for water.

Adjourned until Friday the 25th day of September, A. D. 1908, at the hour of nine o'clock A. M.

Pursuant to the foregoing adjournment the parties appeared by their respective solicitors, the complainant appearing by Ernest Knaebel, Esq., and the defendant appearing by Ethelbert Ward, Esq., on Friday the 25th day of September, A. D. 1908 at the hour of nine o'clock A. M., whereupon the following proceedings were had:

Cross-examination of JOHN MCLAREN continued.

By Mr. WARD:

Q. Mr. McLaren, when did you make the map introduced into evidence?

A. In July 1908.

Q. About what time?

A. About the fore part of the month; I cannot remember the exact date.

Q. Now when were the different times that you were on the country in the neighborhood of Mr. Light's ranch? I think you said four times, if I am not mistaken; when were those times?

A. August 28, 1907, May 1908, June 5, 1908, September 6, 1908.

Q. Now when did you examine this territory for trails?

A. On August 28, 1907——

88 Q. Did you find any trails then?

A. (Witness continuing:) —June 5th, 1908 and September 6th, 1908.

Q. Did you notice any trails on August 28, 1907?

A. Yes sir.

Q. Are those the trails that you have now marked on this map?

A. One of those trails is pointing on plat),—the southerly trail I saw at that time.

Q. Did you have this map with you when you were locating those trails?

A. Last Fall?

Q. At any time?

A. No sir.

Q. How did you locate those trails in reference to section lines?

A. Those trails were located by approximation as nearly as possible from actual observations on the ground.

Q. Did you find there any section corners?

A. Yes sir.

Q. Indicate on the map, will you, what section corners you found between Mr. Light's ranch either north or west of it; give the numbers of the sections.

A. In the northeast corner of section six.

Q. You found that section corner?

A. Yes sir, also the northwest corner section 6, and the intervening quarter corner.

Q. Did you notice any other section corners?

A. At the northeast corner of the forest boundary there was a section corner established; also the intervening quarter corner between that and the northwest corner of section 6.

89 Q. Did you find some corners farther down south of the corner last named.

A. Yes sir.

Q. What corners did you find?

A. I found each section corner south.

Q. Give the names and the numbers, please.

A. Southwest corner section 1.

Q. What township and range?

A. Township 9, range 87. The southwest corner of section 12; southwest of section 13,——

Q. That will be enough. Mr. McLaren, in making that map you were very careful to have it accurate, I suppose?

A. Yes sir.

Q. Now what memoranda did you have on going over those trails so as to enable you to mark the trails on the map?

A. The finding of these section corners here.

Q. And then did you have a plat with you, or a map?

A. I had township plats with me, this plat.

Q. And you marked the trails upon the township plats as you went along them?

A. No sir.

Q. When did you mark the trails on any of the plats, recently or——

A. Yes recently.

Q. So up until within a few weeks you had no map or plat or tracing in your possession which you had made showing where the trails were?

A. No sir.

Q. So you marked the trails from memory upon that plat?

A. Yes from memory, and the examination of the ground.

Q. And you think that the marking was made some time
90 in September 1908?

A. Yes sir.

Q. And was it after September 6th?

A. Yes sir.

Q. And where was it, in Glenwood or Denver that you marked these trails; you marked them when, on the 24th did you?

A. 24th; that is the reason I asked the date of the month; I had forgotten.

Q. Up to yesterday had you any knowledge of the fact that the question of trails would be material in this case?

A. Yes sir.

Q. How did it happen that you made no map or tracing or plat of trails up until yesterday?

Mr. KNAEBEL: Objected to as immaterial.

The EXAMINER: You can answer if you know, Mr. McLaren.

A. There was no reason for not placing them on the map.

Q. Well, had you had your attention called by the proper officials of the Forestry Service to make an examination of these trails?

A. Yes sir.

Q. But you didn't think is sufficiently important to make any ritten memorandum of your investigations of trails?
A. Well, I have some written memoranda on that subject in a ily diary which we keep.
Q. You have those, have you?
A. I have some data on those.
Q. Have you them with you?
A. I think so.

(Witness produces the data referred to).

Q. Did you use those data that are being looked up now of Mr. ench in marking these trails yesterday?
A. No sir.
Q. You think you marked them from memory?
A. Yes sir.

Q. From your knowledge of plats and maps would it be more fficult to locate a trail upon a plat of this sort than to locate the tions and quarters of surveyed lands?
A. The corner of a section might be located by approximation just easily as a trail; that is it would be no harder to locate a trail by proximation than it would be to locate a section corner by approximation.
Q. I didn't ask you about approximation.

Mr. WARD: Please read the question again.

Q. (Question read by stenographer.)
A. It seems to me I answered that question.
Q. So you don't care to make any further explanation of that?
A. If I understand your question clearly that answers it fully,— y answer.
Q. Suppose I asked you to locate the northeast quarter of section on this map, could you do it accurately?
A. Yes sir.
Q. Why?
A. Because the township records were taken from the records of e Land Office.
Q. And the map is a correct map?
A. Yes sir.
Q. And the sections correctly placed there?
A. Yes sir.
Q. And all you must do is to count the different sections and put e northeast corner of it on, so that is very easy, isn't it?
A. Yes sir.

Q. When you were there examining trails you probably noticed trails running up toward the northwest toward Carbondale, didn't you, down East Sopris Creek?

A. One trail was marked there.
Q. Did you notice other trails running down East Sopris Creek ward the direction of Carbondale?
A. No sir.
Q. You didn't?
A. No sir.

Q. There is a road that runs along down the direction of Sopris Creek—East Sopris Creek, down to Emma from Mr. Light's ranch; could you locate with any accuracy the curvings of that road on this plat?

A. Quite fully, because the road practically follows the course of East Sopris Creek.

Q. So, owing to the fact that it practically follows East Sopris Creek you could make a comparatively accurate plat of that road, provided East Sopris Creek is put on that properly?

A. I could draw an approximate location of the wagon road.

Q. Now, Mr. McLaren, if there should be a wagon road cutting diagonally across the hills more or less curving, as it must be in that mountainous country, in the general direction of Carbondale, but not following the creeks—over the hills, would that be more difficult to locate than a road following the creek, on this plat?

Mr. KNAEBEL: This is objected to as incompetent and utterly immaterial.

A. Since I don't know the location of the trail there, I
93 could not locate a trail with that map.

Q. Well, now, Mr. McLaren, as a matter of fact, just be fair about it, isn't it more difficult to locate a trail upon a map like this where the trail winds over the hills and there is no course or direction, than it is to locate a road that follows the creek?

Mr. KNAEBEL: That is objected to as containing the answer in itself, and incompetent.

A. Where it is a well known fact that the wagon road follows the creek, it is a simple matter to draw the wagon road in,—more simple than to draw in a trail cross he hills.

Q. And you knew that before you put the trails upon this, marked the trails upon this map, didn't you?

A. Yes sir.

Q. And you hadn't taken the precaution up to that time to make any plat, to mark trails on the plat to guide your memory in marking them on this map?

A. No sir.

Q. Isn't it possibly that you might have made some very serious mistakes as to the location of those trails from memory?

A. Not very widely mistaken; as I say, those trails are located by approximation.

Q. Would you say they would be out as much as a quarter of a mile?

A. Possibly.

Q. But you wouldn't consider that much matter,—a difference of a quarter of a mile?

A. No.

94 Q. But when you went to examine these trails where did you begin, what part of the country, up north of Mr. Light's ranch or down on the Forest Reserve?

A. I think we made trips from both ends.

Q. Where did you begin?
A. The first trip started in on the Forest, and came down.
Q. That day did you find a trail up on the Forest Reservation?
A. Yes sir.
Q. About where was that trail?
A. That was approximately in here, in Hay Park.
Q. The one given on the map as the most southerly trail, is it?
A. Yes sir.
Q. And that is the one you have marked there?
A. Yes, near the terminus of that country.
Q. How did you do, follow that trail down?
A. Yes sir.
Q. How far did you go upon it, quite close to East Sopris Creek?
A. Well, a distance of four miles.
Q. Did you examine the territory between the trail you have just now spoken of, and East Sopris Creek, for trails?
A. Yes sir.
Q. Did you find any trails in that vicinity?
A. There are a number of poor trails, cattle trails, over the country there, but not well defined, regularly used trails as this one is.
Q. There would be no difficulty for an experienced cow man to find the trail that you have just been speaking of, would it?
95 A. No sir.
Q. Is it a wagon trail, or simple a cow path?
A. It is what would generally be termed the "work trail"; I saw a wagon driving over a part of the trail from the southwest portion of Mr. Light's ranch up.
Q. Do I understand you to say that there are signs of wagons having been driven over and along this trail?
A. Over a part of that trail; I saw a young man, whom I understand is Mr. Light's son, coming down that trail with a load of wood, going through the fence there at the southwest portion.
Q. Where was he when you saw him?
A. He was going through where this trail comes down in the southwestern corner of Mr. Light's place.
Q. How far was he from Mr. Light's ranch when you saw him?
A. Entering the ranch.
Q. That is, when you saw him?
A. Yes.
Q. So he was driving over that portion of the trail that enters the ranch?
A. Yes sir.
Q. Now did you make any examination of these trails at the north end of Mr. Light's ranch?
A. Yes sir.
Q. Did you see Mr. Light's north fence there where it crosses the creek?
A. East Sopris Creek?
Q. East Sopris Creek.
A. Yes sir.
96 Q. How far up these trails from that fence where it crosses the creek?

A. They were right up to the fence.

Q. Now is your memory any poorer today than it was yesterday about these trails?

A. I think not.

Q. Can you tell me how the trails run from East Sopris Creek in reference to Mr. Light's north fence?

A. From East Sopris Creek?

Q. Yes, in reference to Mr. Light's north fence; they start there do they?

A. Yes.

Q. And they go down southwest?

A. A southerly direction from there.

Q. They start right from the creek, do they?

A. There is a trail along the north line of the fence there through the country, a wagon road, a wagon road runs along the course of the creek there.

Q. Is that trail marked on this plat?

A. The wagon road is marked there,—no sir, this trail connects with the wagon road very near the terminus of that trail.

Q. Where does the trail terminate; at the creek?

A. You might say there is no termination to these mountain trails. The main well defined trail comes from this road at this point approximately shown there running in a southerly direction.

Q. Did you stop at the north line of Mr. Light's fence on East Sopris Creek to examine the trails around the corner of that fence and down the creek?

A. Yes sir.

97 Q. And on your plat you have a trail leading from East Sopris Creek out there southwest. Is that trail the trail that you saw close to Mr. Light's north fence?

A. Yes sir.

Q. And your recollection is that that trail as far as East Sopris Creek is started there and run out southwest?

A. Yes.

Q. I suppose there is a well defined trail around the corner of Mr. Light's north fence there?

A. There is to this wagon road.

Q. Did you notice any trails running down,—you haven't one marked running about a little west there?

A. No.

Q. What is the character of the country there right immediately west of Mr. Light's north line of fence?

A. Immediately west?

Q. Yes.

A. It is very steep; the cover is oak, choke cherry——

Q. Is there not a sloping ridge running approximately west, sloping from the south to the north down lying west of Mr. Light's north fence?

A. Yes sir.

Q. The top of that is covered with oak scrub—and sides?

A. The sides are covered with choke cherries, service-berry bushes and oak scrub.

Q. And does the trail run over the top of that, or around the edge of that?

A. Neither; it follows between the top and the bottom around the side of the hill.

Q. Right on the side of the hill. That is a trail that runs approximately west and enters the Reserve from the south, that one you have reference to now?

A. No sir, there is no trail shown there on the Reserve,
98 entering the forest from the south. This case rests entirely upon that land north and east of the Holy Cross Forest Reservation.

Q. Now you have on the map a trail marked, running approximately southwest from East Sopris Creek north of Fred Light's land. How high up the hill does that run,—the hill which is the westerly boundary of East Sopris Creek gulch.

A. Your question is mistaken; you say the trail is shown as running from north of Mr. Light's ranch southerly and westerly.

Q. Yes sir, there is no such trail on the map.

A. Not as shown there.

Q. Now just from your recollection, you having placed these upon the map yesterday from recollection,—how many principal trails have you marked on that map?

A. I have shown two principal ones, with a third running from the corner and converging into this southwesterly trail.

Q. Now there is one more northerly than the other, is there?

A. Yes sir.

Q. Describe how that runs,—where it enters the Forest Reservation?

A. It runs in a westerly direction from the northwest corner of Mr. Light's place.

Q. How far from Mr. Light's fence?

A. Running right around the fence close to the fence; it follows along over to a small stream, for which I know of no official name; it follows that stream south into the forest.

99 Q. So that trail does enter from the south, doesn't it?

A. No, sir, it does not; it enters from the northwesterly of the Holy Cross Forest.

Q. You are right.

A. Certainly.

Q. Now the other trail which is over to the south from the one you have just described, how does that run, where does it begin with reference to East Sopris Creek?

A. It is shown on the map at——

Q. Tell me where it is from your recollection?

A. It runs from the south.

Q. Where does it begin with reference to East Sopris Creek from the north. Now do you understand my question?

A. Please state it again.

Q. You have said that there is another trail more to the south from the one you have just described, which leaves East Sopris Creek and runs in a general southwesterly direction into the Forest Reserve. Please describe that trail, beginning at East Sopris Creek.

A. Beginning at East Sopris Creek that trail runs in a south or southwesterly direction following very close to Mr. Light's west line fence, to a point where he joins Mr. Finley's fence; it converges there with another trail, and the two trails is shown as one on the map, continuing on up into the forest into Hay Park.

Q. Where does this trail begin, in reference to East Sopris
100 Creek, to the north of Light's ranch?

A. In reference to East Sopris Creek it begins at East Sopris Creek.

Q. In reference to Mr. Light's north fence where does it begin?

A. It begins at Mr. Light's northwest corner.

Q. In reference to his north fence where does it begin?

A. I don't know how I would give you a much more clearer answer on that. It begins, as has been stated several times, a short trail from this road to this northwest corner, the trail follows then as described.

Q. What do you mean by this northwest corner?

A. I mean the northwest corner of Mr. Light's ranch.

Q. Now where does this trail leave East Sopris Creek in the neighborhood of Mr. Light's north fence?

A. At the northwest corner of Mr. Light's ranch.

Q. Does East Sopris Creek run to the northwest corner, section corner of Mr. Light's ranch?

A. It does not miss it far.

Q. About how far would you guess?

A. Twelve or fifteen rods.

Q. Do I understand you to say that this trail leaves East Sopris Creek approximately close to where Mr. Light's north fence crosses East Sopris Creek?

A. Yes sir.

Q. Does it run along the fences between Mr. Light's ranch and the Forest Reserves along East Sopris Creek, or does it run up on the hill and over the hills?

101 A. It follows as near East Sopris Creek as it is possible to get because of the fences to the southwest corner.

Q. And how far does it go before it cuts over the hills?

A. It is following over hills the whole distance.

Q. Does it follow, leave these fences, I mean the fences of the other ranches below Mr. Light's; does it ever leave these fences any great distances; there is no trail described though as lying below Mr. Light's after it leaves Mr. Light's ranch it goes up over the hills into the forest reserve, is that right?

A. I think that you mean up above Mr. Light's ranch when you speak of these other ranches, don't you?

Q. Yes, I mean south.

A. You said below.

Q. Now the ranches above, that is, southwest of Mr. Light's ranch, have fences along them?

A. Yes sir.

Q. And does this trail run anywhere near these fences?

A. For a distance it does.

Q. About how far down?
A. How far up?
Q. How far up, how far south I should say?
A. Well, approximately a mile and a half to two miles from the beginning point as described.
Q. And then it cuts across the hill, does it?
A. It follows across the hills in a general grade; does not go directly straight up across the hills.

102 Q. Where does it enter the forest reserve in reference to where East Sopris Creek flows out of the forest reserve?
A. It enters it at a point considerably north.

(Photographs are here marked "A," "B" and "C" "Defendant's Proofs.")

Q. I hand you a photograph marked Exhibit C Defendant's Proofs; do you recognize that country?
A. Yes sir, I recognize the general locality.
Q. Do you see some fence posts in that picture over that small cliff?
A. I don't see a cliff in the picture.
Q. I have reference to this right here (indicating on photo).
A. I see something there that might represent fence posts, it is not plain enough to identify it as a fence.
Q. From that photograph can you see what country that is?
A. I am not quite sure, but it looks as though it had been taken from the north of Mr. Light's ranch.
Q. There is nothing in the exhibit that would enable you to locate Mr. Light's north fence, is there; you can not locate Mr. Light's north fence from this exhibit?
A. Not definitely.
Q. I hand you Exhibit number D. Do you recognize that fence, and where it is?
A. Well, there is very little of the surrounding country shown here, I take this to be a picture of the northwest corner of Mr. Light's place.

Q. Do you see on that photograph any indications of trails?
103 A. No sir, I don't think that is shown here.
Q. If that is a correct photograph of the north fence of Mr. Light looking southwest where should the trail be that leaves East Sopris Creek in that vicinity?
A. It should be just west of that corner.
Q. Just west of that corner?
A. Yes, sir.
Q. Where should it be where it leaves East Sopris Creek, near that fence where it leaves the creek?
A. A short distance from the corner of that fence.
Q. As much as a hundred yards?
A. I approximated that at twelve or fifteen rods, I believe.
Q. How many yards is that?
A. Five and a third yards to the rod, so that would be a hundred yards, or better; it would be a little less than that.

Q. So, then, you have marked upon your map from memory where that trail begins, and where it approximately ends in the forest reserve?

A. Yes.

Q. Now I hand you the map, Exhibit 1, and please tell me from that map where that trail leaves East Sopris Creek with reference to the section lines?

A. It leaves approximately close to where the section line crosses East Sopris Creek.

Q. How far is that from Mr. Light's north fence, as the map shows?

A. A very few rods.

104 Q. As the map shows.

Mr. KNAEBEL: Well, that is objected to because the map speaks for itself, a very few rods.

Q. That is what the map shows, does it?

A. Yes.

Q. What is the scale,—upon what scale is this map drawn?

A. An inch to the mile.

Q. What part of an inch is it from the north line of Mr. Light's land to where this trail leaves East Sopris Creek as marked upon the plat?

A. If you will give me a rule I will measure it (witness measures), quarter of an inch.

Q. Which way are you measuring, due north and south?

A. Measuring from Mr. Light's fence to that point.

Q. To what point?

A. To where this trail comes to Sopris Creek.

Q. And that would be a quarter of a mile according to the scale of the map?

A. Yes sir.

Q. So that your map is not correct as to where it leaves East Sopris Creek?

A. The map is correct, and the trails were put on there by approximation.

Q. So the trails are not correct?

A. The trails are approximately correct.

Q. Does the map show correctly where the trail leaves East Sopris Creek?

A. Approximately.

Q. Approximately; but does it show correctly?

105 A. It shows approximately correctly where the trail leaves East Sopris Creek.

Q. How far approximately correct,—a quarter of a mile?

A. Approximately a quarter of a mile from the north line of Mr. Light's fence.

Q. So the marking of the trail is not correct as to where it starts?

A. The marking of the trail is approximately correct.

Q. But is it correct?

A. It is approximately correct.

Q. That means it is not correct, is it. Are the other portions of that trail as approximately correct as the beginning of it?

A. Yes sir.

Q. More so, or less so?

A. I wouldn't say either way.

Q. Now you testified that where you have a creek to start from, and section also to start from, it is more easy to locate trails than roads?

A. Providing you are paralleling the stream.

Q. And where you have section lines and a stream at the beginning of the trail you have got it off from the proper location a quarter of a mile on the plat?

Mr. KNAEBEL: I object to that; there is no such testimony in the record; it assumes a falsity.

A. You haven't shown me the proper location according to your standpoint.

Q. Show me on that plat the particular place where that trail leaves East Sopris Creek?

106 A. That is already described and shown there as approximately correct.

Q. Approximately correct, but show me now the correct place, please.

A. Right there is approximately the correct place where this trail leaves East Sopris Creek.

Q. You told me it left East Sopris Creek close to where Mr. Light's fence crosses East Sopris Creek?

A. Yes sir.

Q. And that is a quarter of a mile southeast of that point you have marked on the map?

A. It is not the way I count directions.

Q. According to scale it is one-quarter of an inch on the map.

A. I wish to show here that the examiner is calling north "south" again; he is looking at the map upside down; this is north at the top of that map.

Q. Where on this map does the trail leave East Sopris Creek? Point it out.

A. Approximately there. (Indicating on map.)

Q. Approximately. You can not tell, though, where it leaves it. So you still insist that the trail leaves East Sopris Creek at the point where the division section line between sections 29 and 32 crosses East Sopris Creek?

A. I claim that that is the approximate location, yes, sir.

Q. Mr. McLaren, how are these trails formed by cattle, while going to water or coming from water?

A. Formed both ways at places.

Q. How are they generally formed?

A. Generally formed wherever cattle use them, whether

107 naturally drifting or whether being driven.

Q. When cattle are naturally drifting do they follow trails, as a rule?

A. Yes sir.
Q. Do they follow trails where they are grazing?
A. No sir.
Q. When cattle go to water do they generally follow trails?
A. Follow trails.
Q. When they return from water do they follow the trails or use the grass.
A. That depends on the location of it, for they go to grazing right near water if the feed is sufficient.
Q. Are the trails formed ordinarily by cattle going down hill or up hill?
A. From whichever way the cow travels.
Q. Ordinarily?
A. A cow would not travel up and down hill.
Q. So you don't know?
A. I do know.
Q. What is your answer?

Mr. KNAEBEL: The question is objected to as obscure and incapable of any sensible answer.

Q. Is that your answer, you don't know?
A. I do know.
Q. Can you tell by looking at the trails that you have described whether these trails were formed by cattle going up hill or coming down hill?
A. I can tell whether the cattle have gone up or down the trail, but whether the cattle have formed the trail by going up hill or down won't show in the trail.
Q. Can't you tell?
A. No trail is formed without stock traveling both ways.
108 Q. (Question read by stenographer).
A. You can not; there is no picture of the cattle on the trail.
Q. From your knowledge of catle grazing how do you think these trails were formed?
A. Formed by cattle traveling to and from the forest.
Q. There is feed all the way from East Sopris Creek to the forest reserve, isn't there?
A. It is very sparse.
Q. Is it any more sparse than north and northeast of Mr. Light's ranch?
A. No sir, I should judge not.
Q. Would you think that these trails were formed by cattle being driven from the forest reserve back to the direction of Mr. Light's ranch, or from cattle going from Light's ranch to the forest reserve?
A. I would judge the trails are formed by cattle traveling to and fro.
Q. You don't think that those trails were used by cattle to go to water?
A. No, sir, not from the situation of the water, I should say not.

Q. I think that you testified yesterday that there isn't much water between Mr. Light's ranch west of his ranch and the forest reserve?

A. Yes sir.

Q. So that the cattle would have to travel several miles across a territory with very little water in it?

A. That depends on where the cattle start.

109 Q. Starting from the north line of Mr. Light's ranch and going southwesterly along this trail they would have to travel several miles without water, wouldn't they?

A. At this time of the year there is very little water between the forest line and Mr. Light's ranch.

Q. Is there any objection to answering my question?

Mr. KNAEBEL: I object to the question because it is vague and indefinite as to the time and conditions of the year to which it refers.

Q. At this time of the year would they have to travel any distance without water?

A. Yes sir.

Q. And in June would they have to travel any distance without water?

A. If they started at the northwest corner and followed this trail without leaving it or being driven to the end of the trail, they would travel several miles without water.

Q. Can the cattle see the forest reserve from down East Sopris Creek.

A. I don't know whether a cow would recognize the forest reserve from East Sopris Creek or not, I should.

Q. Mr. McLaren, how much practice have you had in reading cattle brands?

A. I can not give you the exact number of days that I may have put in at it. I have read brands for a good many years, whenever I have been around with cattle.

110 Q. You spoke of riding through the forest reserve and seeing cattle thereon with certain brands on them. On the 5th of June you saw cattle with two kinds of brands. Did you notice those brands carefully?

A. I did; but I don't think that I stated that I saw two kinds of brands.

Q. I understood you to say that you saw cattle branded "Lazy V T" and "U Slash U".

A. I noticed those brands carefully at any time that I saw them.

Q. Did you see them that day, June 5th, cattle branded with those two brands?

A. That was the date upon which I had to refer to my notes yesterday, and my remembrance is fourteen head.

Q. Now is it possible for you to have made any mistakes about reading those brands?

A. No sir.

Q. On what part of the cattle was the Lazy V T brand placed?

A. The Lazy V. T. was on the right hip.

Q. And please mark again in the stenographer's book the Lazy V T brand which you saw that date.

(Witness marks Lazy V. T. brand as follows:)

Q. Do you think it is possible that you may have counted some of those cattle twice that day?

A. No sir.

Q. You didn't go over a very large territory that day?

A. Covered considerable territory.

Q. But you didn't go back over the same ground?

A. No sir.

Q. Were you on the forest reserve May 19th,—was it 1907
111 or '8?

A. I was not.

Q. You were not on the forest reserve?

A. No, sir, not in either year? You refer particularly to this locality?

Q. Yes. You were on the portion of the Holy Cross Reserve near Mr. Light's ranch on the 5th of June, were you not?

A. Yes sir.

Q. And what was the condition of the feed and grass at that time?

A. The feed within the forest was starting, was in good shape; cattle were *using* there through Hay Park through the timber, and some of the cattle were right up at snow line.

Q. And on September 6th you were on the same territory, were you?

A. Yes sir.

Q. What was the condition of the feed and grass there then?

A. It was very much worse.

Q. Very much worse?

A. Yes sir.

Q. Had it been eaten off?

A. Yes sir.

Q. How much of the range did you go over that day?

A. Which date?

Q. On the 6th of September of this year?

A. I should say that I rode twenty-five miles that day, covering the range.

Q. That was the day that you found eleven "U Slash U" and two "Lazy V T" cattle?

A. Yes.

Q. Did you look over any other portion of the unreserved range in the neighborhood of Mr. Light, either on the 5th of June or on the 6th of September of this year?

A. I did on the 5th of June, but not on the 6th of Sep-
112 tember.

Q. Did you see any of Mr. Light's cattle, or cattle marked "Lazy V T" or "U Slash U" on the unreserved range?

A. On June 5th I saw twelve head, I think it was, of "Lazy V T" between Mr. Light's place and the forest boundary around these bog holes that I have mentioned,—seep holes; there was a very small

upply of water there at that time, and a few cattle hanging around here.

Q. Did you see any of them north and northeast of Mr. Light's anch?

A. No sir.

Q. Were there any cattle up there that day that you noticed?

A. Not except where I have mentioned.

Q. You testified about examining the range north and northeast nd northwest of Mr. Light's ranch, and made a statement that a ertain portion of that range would only support about fifty or sixty attle. What portion did you have reference to, as far as this map concerned?

A. That would be this portion directly, right around in here indicating).

Q. Between what creeks?

A. Between East Sopris Creek and Roaring Fork.

Q. You made no examination of the range conditions west of East Sopris Creek that day, did you?

A. Yes sir.

Q. How far did you examine the range west of East Sopris Creek?

A. To the forest line, and within the forest.

13 Q. How far did you examine the range northwest from Fred Light's ranch beyond Sopris Creek?

A. Which direction do you call "beyond Sopris Creek?"

Q. Northwest beyond Sopris Creek. See, there is Sopris Creek; ou are familiar with the country there,—or did you examine that erritory?

WITNESS: Mr. Ward and I do not seem to get directions.

Q. I said northwest of Fred Light's ranch.

A. I never went beyond Sopris Creek.

Q. Do you know how far cattle may go upon the unreserved pub- c lands up the Roaring Fork Valley in the direction of Aspen, ow far from Mr. Light's ranch?

A. There is a road running from Mr. Light's ranch directly into spen; cattle can be taken the entire distance.

Q. I didn't ask you where they may be taken; I said how far attle may range upon the unreserved public land?

A. I beg your pardon, the question didn't read that way.

Q. (Question read by stenographer).

A. They may go directly into Aspen.

Q. I asked you how far, how many miles?

A. Approximately twenty miles, the distance is.

Q. Well, now, do you know how far it is, approximately, from Ir. Light's ranch to Carbondale?

A. About fourteen miles.

14 Q. How far is it possible for cattle to graze and range in a northwesterly direction from Mr. Fred Light's down the Roaring Fork in a northwesterly direction upon the unreserved pub- ic lands of the United States?

A. Owing to the fact that the Roaring Fork Valley and tribu- aries there is practically all taken up by settlers, and the fact that

each settler grazes his stock in the vicinity of his ranch, owing to the topography of the country there is no chance for Mr. Light's cattle to graze and get enough grass to support them in this direction.

Q. Did you understand my question?

A. I thought I did.

Q. I will ask it again. How far is it possible for cattle to graze and range upon the unreserved, unenclosed public lands of the United States lying in a northwesterly direction from Mr. Light's ranch?

A. It is not possible for them to graze in that direction owing to the reasons given.

Q. Are there any open, unreserved public lands of the United States lying northwesterly from Mr. Light's ranch?

A. Yes sir.

Q. To what distance may you go in a northwesterly direction and find these open, unreserved public lands?

A. Not having a plat of the entire country there which is patented I could not say.

Q. Could you give an approximate?

A. I would not make an approximation because this way east from Carbondale the valley is very well settled up, very thickly settled.

115 Q. According to your plat to what distance is it shown there in a northwesterly direction that there are open, unreserved public lands of the United States?

Mr. KNAEBEL: This is objected to because the plat speaks for itself.

A. Diagonally across one township and one section.

Q. Have you any objection to mentioning how many miles it is?

A. I can give you an approximation; I don't intend to figure this thing out in feet and inches,—approximately nine or ten miles.

Q. According to your plat. But does your plat purport to show all the unreserved, public lands in that vicinity?

Mr. KNAEBEL: We will stipulate that they run up to Kamchatka if you like; if you want a stipulation that will go up to Seattle we will give it to you, or Alaska.

Q. Is it not possible for Mr. Light's cattle to stray and graze from his ranch clean down to Glenwood Springs without getting on a forest reserve?

A. No sir, I should say not.

Q. Is it possible for Mr. Light's cattle to stray and graze from his ranch down to Cardondale without getting upon a forest reserve?

A. No sir.

Q. How far do you think it is possible for Mr. Fred Light's cattle to stray and graze in a northwesterly direction from his land without getting upon a forest reserve?

A. I cannot give you an approximation as to that distance.

Q. How far do you think they can go upon open public
116 lands, either reserved or unreserved, in a northwesterly direction from his land without striking fences?

Mr. KNAEBEL: This is objected to as obscure because it does not show whether it is intended to mean to go and find food as they go, or simply go.

Q. I said stray and graze.

Mr. KNAEBEL: You mean stray and graze, I wanted to understand it, that is all.

Mr. WARD: Yes, stray and graze I meant to say.

A. They may be able to go a distance of three miles or four miles.

Q. You think, then, they could not stray and graze much more than four miles?

A. No sir.

Q. Why not further than that?

A. You asked—your question was "on account of fences"; if you modify that and say that they can not stray and graze in that direction for lack of feed——

Q. Your answer is, then, on account of lack of feed?

A. To your last question, yes.

Q. Is there anything to prevent them going further if they could do without feed?

A. There are roads all through this country, cattle can go practically anywhere.

Q. They could go to Glenwood Springs?

A. On the wagon road,—railroad track.

Q. Could they get beyond the unreserved, public lands of
117 the United States?

A. They can by following the wagon roads and railroads, yes.

Q. Couldn't they get to Crystal River from Mr. Light's ranch without trespassing on the forest reserve?

A. No sir.

Q. You think not?

A. No sir.

Q. Could they get up as far as Aspen without trespassing on the forest reserve?

A. Will you modify, please, the question as to whether you mean can they go up a wagon road into Aspen or——

Q. I mean can they walk and graze and stray up in a southeasterly direction towards Aspen, as far as Aspen, without getting upon the forest reserves?

A. No sir.

Q. How far can they go from Mr. Light's ranch in the direction of Aspen by straying and grazing without trespassing on the forest reserve?

A. It is an impossibility for them to stray and graze in that direction.

Q. Why?

A. Owing to the topography of the country and scarcity,—lack of feed.

Q. And that scarcity of feed extends both northeasterly up the Roaring Fork—I mean southerly up the Roaring Fork—and northwesterly down the Roaring Fork, there is that same scarcity of feed?

A. Northwesterly down,—yes, sir.

Mr. KNAEBEL: May I ask if these questions are referring to the vacant, unoccupied, unentered land?

Mr. WARD: Yes, unenclosed land.

118 Q. You think the open range in the neighborhood of Mr. Light's ranch, the open unreserved range, would support how many cattle throughout the season, that is the range available to Fred Light?

A. Possibly fifty or sixty head with proper handling might be pulled through there for the summer season. As a range it is absolutely worthless to stock men.

Q. Do you figure that the territory northwest of Sopris Creek could support any cattle, the unenclosed, unreserved lands?

A. If you could hold them on the side of the hill they could get some feed there.

Q. How many cattle do you think that territory—as far as Mr. Light's cattle could go—would support northwest of Sopris Creek?

A. Northwest of Sopris Creek,—I will make no approximation on that part of the country.

Q. But you think that is no better?

A. This range northwest of Sopris Creek is not available to Mr. Light's cattle, it is clear out of the district where his cattle would range.

Q. Why not?

A. The country is taken up with patented lands and ranches; each man has cattle of his own which he turns out and grazes on lands contiguous to his own. The further fact which warrants this statement is that ranchmen even this far out take up permits because their stock drift into the Holy Cross Forest from those points.

119 Q. Is it not a fact that if the cattle of the ranchmen you have just referred to, graze in the Holy Cross Forest Reserve, that there will be that much more grass left on the unreserved public lands?

A. No sir, the range lower down is earlier, as any one knows; those cattle are turned out there just as soon as it is possible for them to get the benefit of what range there is; they use that range to the limit.

Q. They eat it all up, then, before what time of the year?

A. The cattle drift from this locality here—township 8, south range 87 west; the cattle drift up into the forest there as early as June or July.

Q. Does the grass grow on that range any more after June?

A. It grows some more after June but begins to get very dry there—scarce.

Q. It is a blue-stem mostly, is it?

A. Yes sir.

Q. And it gets dry as the summer time comes on?
A. Yes sir.
Q. And the range becomes very poor for cattle?
A. Yes sir.
Q. And dry blue-stem is not very good feed, is it?
A. It furnishes good nourishment for cattle when it is in good condition.
Q. What is the best feed for cattle—blue-stem?
A. Blue-stem—plenty of it.
Q. What is the best, green blue-stem or dry blue-stem?
A. You don't find dry blue-stem cattle will eat——
120 Q. I mean blue-stem that is not green?
A. I never have seen it dry fit for food.
Q. Only the green blue-stem is fit for food for cattle?
A. Yes sir.
Q. And as soon as the blue-stem loses its greenness and freshness and begins to get cured, with seeds on it, then it is not fit for cattle. Is that your opinion?
A. My opinion is that I never seen on the range blue-stem that was dry, that was fit for feed; green only is good for nourishment.
Q. It only has nourishment when it is green?
A. Yes sir.
Q. And in July and August it is not fit for food for cattle?
A. You can not find it.
Q. Well, is it fit for feed if it should be found?
A. If you should find it in proper quantities it might do.
Q. But it is not as good for cattle fodder?
A. No sir.
Q. Now how far may cattle graze on a range away from water and not be damaged by taking a long trip backward and forward each day for water?
A. That depends wholly on the topography of the country. In ordinary cattle grazing countries cattle should not go to exceed a mile; that is a considerable distance.
Q. That is, ordinary countries, out on the plains here?
A. No sir.
Q. What do you mean by "ordinary countries"?
A. Ordinary grazing countries, which we have within the Holy Cross Forest, and such country as exists in this vicinity.
121 Q. They ought not to go more than a mile?
A. No.
Q. Do you think if a cow would have to go as far as two miles for water each day it would be harmful to the animal?
A. It certainly would be harmful for the animal.
Q. Have you ever known in your experience in handling cattle where cattle would have to go as far as two and three miles for water?
A. No, I can say that I have always happened to be in well watered ranges.
Q. Isn't it a fact that a cow can go six to eight miles to water without harming it?

A. And return?

Q. Yes.

A. No, sir, not even go six or eight miles, without the return, it would damage the animal.

Q. You know nothing about the water conditions in the eastern part of Colorado, do you?

A. Yes sir, some.

Q. In the eastern part of Colorado, on the plains?

A. Southwestern part that is down by Huerfano County.

Q. Do they raise cattle down there, or mostly sheep?

A. Mostly cattle.

Q. You never saw any cattle down there go as far as four or five miles to water, have you?

A. Yes sir, I have known of their going that far; I never happened to be with them. They used to run in the country as far as that; I saw fifteen or twenty years ago Texas cattle, they were like deer.

Q. Mr. McLaren, you spoke about this country north and
122 northeast of Mr. Light's ranch as being of what character of country with reference to topography?

A. North and northeast of Mr. Light's between East Sopris and the Roaring Fork?

Q. Yes.

A. For some distance north of the patented lands along the Roaring Fork——

Mr. KNAEBEL: North of the patented lands?

WITNESS: South.

(Witness continuing:) —the mountain is high and steep and precipitous; it is inaccessible to man getting up and down there.

Q. From which direction?

A. From the Roaring Fork south.

Q. Now as to Mr. Light's ranch, how is the country, sloping,—as to the accessibility of it?

A. When you get to the top of this high mountain the slope is toward Mr. Light's place, or to the south and southwest. The eastern portion of this public land shown here is also cliffy and precipitous, covered with cedar and piñon,—sort of gypsum character, I should say, with practically no forage of any sort on it. The western portion of this strip here is even more rocky, cliffy and precipitous than the eastern portion. It is composed of red sandstone cliffs which stand up there to a considerable height. That class of country follows eastward until you get almost as far east as Mr. Light's place; it has some piñon and cedar on it, and some little scrub oak, and there is practically no forage of any sort there.

Between these two points mentioned where the cliffs are,
123 there is a rolling country, part of which is cut up by long and pretty steep gulches, pretty deep gulches.

Q. And it is easily accessible to cattle grazing?

A. It is not particularly hard to get cattle up there by following along the bottoms of these gulches and side hill trails.

Q. There are precipitous gulches and side hills there?

A. There are on these two extreme ends.
Q. And how about in between?
A. In between it consists of a more rolling country.
Q. And did you say there are a number of deep gulches and precipitous?
A. Not precipitous.
Q. But difficult for cattle to graze on it?
A. No, the country—there will be a steep hill opening up on a mesa, and maybe another steep hill and you will find places where cattle can graze.
Q. As compared with other portions of cattle ranges you have seen is that extraordinarily inaccessible to cattle, or is it about the average in that country?
A. About the average in a small area there.
Q. It is about the average of the western slope cattle country, is it?
A. As to accessibility?
Q. And topography through the country?
A. Yes sir.
Q. So there is nothing in the topography to interfere with the cattle going up there and eating.
124 A. In this particular locality that I have described it is not wholly inaccessible to cattle.
Q. Well, is it a difficult country for cattle to graze in?
A. I have answered that about three times. It is the average cattle range there.
Q. Well, can you answer it yes or no? That is the reason I ask you so often for it; if not, say not.
Q. Will you kindly give me your question again?
Q. Is it a difficult country for cattle to graze on?
A. Yes.
Q. I hand you Exhibit B., a photograph. Do you recognize that tract of country?
A. This scene evidently represents the wagon road; the section of wagon road between Mr. Light's ranch and the Emma.
Q. Does that resemble in general resemblance the western boundary, or southwestern boundary of the country you have just spoken of?
A. Yes, it represents the portion of the country road, along the wagon road on East Sopris Creek.
Q. I hand you Exhibit E., and do you recognize that locality?
A. Yes sir.
Q. What house is that down there on the foreground?
A. It is Mr. Light's house.
Q. Can you judge from the photograph the directions of the compass? You are looking in what direction, as it appears to you?
125 A. The photograph does not set square with the points of the compass, I should say; this road would represent approximately an east and west position on the map.
Q. Well, that has the appearance of being a photograph of the territory northeast of Mr. Light's ranch, has it not?

A. Yes it covers——
Q. It has that appearance?
A. The northeastern part.
Q. Can you say, by the aid of that photograph, whether the mountain side in the back ground is the middle territory you have just been describing?
A. I can pick out the territory.
Q. From that photograph?
A. Yes.
Q. Now what territory is at the extreme right of this photograph?
A. This cliffy, gypsum substance of which I have spoken.
Q. That is the extreme right?
A. It does not show on this photograph, the distance.
Q. You don't see any cliffs, or gorges or gulches in that photograph?
A. One can recognize here that there are rugged places if you are familiar with mountain photographs. Here is a high ridge which in this picture appears flat.
Q. I hand you Exhibit A. Do you recognize that territory?
A. I don't recognize it off-hand, no sir.
Q. You don't recall that view very clearly at this time, do you?
A. I felt confident of the locality, however ,not definitely sure until it was explained where the picture was taken.

Q. Now if this is a photograph of the country looking
126 southwesterly towards the Holy Cross Reserve, taken from the hill above Mr. Light's house showing in the foreground the Finley ranch, is it possible for you to locate approximately the trail, the most southerly trail that you have marked upon your plat?
A. No sir, it does not go into detail enough to show the trail.

Redirect examination.

By Mr. KNAEBEL:

Q. Will you state whether the brand of Mr. Light which has been referred to as a "Lazy V T" is not sometimes placed on the animal in the form with the "V" and the "T" reversed as to order?
A. Yes sir.

Mr. WARD: We object, for the reason that it is leading, and we move to have the answer stricken.
Mr. KNAEBEL: Will you admit this on the record?
Mr. WARD: I want this witness to testify, not you.
Mr. KNAEBEL: I say will you admit it on this record?
Mr. WARD: No, sir, I want the witness to testify.
Mr. KNAEBEL: Do you want me to prove it by other witnesses?
Mr. WARD: We admit that it is possible for some of these cattle to have been branded wrong instead of right, that is, branded "T V" instead of "Lazy V T."

Q. From your observations and knowledge of this range upon the vacant lands approachable from Mr. Light's ranch, can you state whether or not Mr. Light has customarily had the monopoly of

the use of those ranges in the spring time, or have others likewise used them?

127 Mr. WARD: We object to the use of the word "monopoly" in the question, as it states a conclusion of law.

A. The range is not used by Mr. Light exclusively; a number of other people use the range,—of settlers there; it is a common custom to turn out early in the spring and get all the early grazing possible.

Q. Irrespective of the drying of the blue-stem, what becomes of the grazing upon that range each year in the spring, for fodder?

A. The fact that cattle are turned out low down and eat it off tends to do away with the reproduction, and it dries up and disappears later in the summer.

Q. This season was it wetter or dryer that last season?

A. This season it was wetter.

Q. And the effect upon the grass in that vicinity was what?

A. It had the effect of keeping it green longer, making a better range.

Q. This year?

A. Yes sir.

Q. And more so than usual?

A. More so than usual,—a better late range than ordinarily.

Mr. KNAEBEL: That is all.

W. S. COPELAND, a witness produced on behalf of the complainant, being duly sworn testifies as follows:

Direct examination.

By Mr. KNAEBEL:

Q. Your full name, residence and occupation?

128 A. W. S. Copeland; residence Aspen, Colorado; manager of the Taylor & Brunton interests there.

Q. Mining interests?

A. Mining and farming.

Q. You have been in the cattle business, have you, during your life?

A. Yes.

Q. Are you acquainted with the defendant Fred Light?

A. I am.

Q. Have you ever heard the defendant discussed, his relations with the forest policy and forest reserve?

A. I have.

Q. Now you will please state when and how?

Mr. WARD: We object to the question that it is indefinite; gives room for any sort of an answer, and uncertain, and therefore incompetent.

A. I have heard Mr. Light on different occasions speak of his relation with the Forest Service.

Q. Now you will please state the first of those occasions, when it was, and where, and what Mr. Light said, if anything, about whether

or not he would comply with the regulations of the Agricultural Department with respect to the pasture of his stock upon any forest reservation?

A. The first time that I recall of a discussion upon that matter was in my office, and I don't think that that phase of it came up.

Q. What did Mr. Light say about it at that time.

A. The general trend of the conversation of those present was as to what our attitude would be for the establishment of a forest.

129 Q. Was that before the Holy Cross was established?

A. About the time of the establishing, as I recall.

Q. You were both, then, connected with some stock association?

A. We were.

Q. What association was that?

A. The Roaring Fork and Eagle River Association, I think,—I am not sure whether that is the appropriate name, or Roaring Fork and Eagle River Stockgrowers' Association, I think; the words may be wrong, it may be Livestock, I am not sure.

Q. And what year was this?

A. I am not sure; it was about the time of the establishment of the forest; it would be in 1905 or 1906, I fancy.

Q. Was it before or after the regulations as to taking out permits that had been put in force with respect to that reserve.

A. This conversation was before either of us had any knowledge of the regulations, as I recall it. I don't think that it was about the time of the establishing of the forest, the conversation to which I refer, but our attention was called to it and we had a conference, several of us, as to the probable effect in our locality.

Q. Did Mr. Light express his attitude at that time?

A. As I recall it, he was in doubt the same as others.

Q. Can you say what the substance of his remarks was upon that subject?

A. The substance of all that conversation at the time was that we were all in doubt as to what——

130 Q. As to what you would do?

A. I don't think the question of cattle grazing came up, it was the question of the general relation, what the effect of this forest reserve would have upon the community, especially upon the stockgrowers.

Q. Now what was the next occasion at which Mr. Light was present and at which anything was said by him concerning the grazing of his cattle upon the forest reserve?

A. If my memory serves me right it was a gathering in the district court room in Aspen.

Q. In what year, about?

A. Well, in whatever year that was; I don't keep track of rain storms or meetings accurately, but it was after this meeting in my office.

Q. Was it before or after the Department——

A. Mr. Light says it was that evening; it was subsequent to the meeting in my office.

Q. Was it before or after permits had been required for the Holy Cross?

A. I think before.

Q. Now state what occurred on that occasion?

Mr. WARD: We object to this testimony and ask that it be stricken out, both as to the second and first conversation on the ground that all of these happened before there was any establishment of rules and regulations therefor, and therefore is incompetent, irrelevant and immaterial.

Mr. KNAEBEL: Counsel for complainant states that this is only introduced as the beginning of an attitude and a course of conduct on the part of the defendant which will be proven to have continued to the present time.

131 A. There was a general discussion of those present as to the probable effect of the establishment of this forest reserve; it was a new thing in our locality.

Q. Who were present; what class of men?

A. A gathering of representative business interests of that community.

Q. Now what, if anything, did Mr. Light say, or how did he express himself?

A. As I recall it he expressed doubt as to its being beneficial to the livestock interest, and timber interests.

Q. Is that all?

A. At that stage we were all in doubt, and I don't recall a specific statement.

Q. Have you ever heard Mr. Light express himself adversely to the forest policy of requiring permits for grazing?

A. I have.

Q. Now please state the first of those times,—when?

A. I doubt if I could state when; it has happend many times but I doubt whether I could state the first, or the second or third time.

Q. State if you please in your own language, as nearly as you can, the places and the occasions, and what was said?

A. I recall different conversations.

Q. Give them all, please; give them all in order.

A. I doubt if I could give them in order.

Q. Well, give them all as nearly as you can?

A. I recall conversations, now I don't claim that they are chronological, but I recall conversations in Aspen, in Basalt, in Carbondale, but as to the order in which they came——

Q. What conversations?

132 A. Bearing upon this matter of permits and the Forest Service.

Q. Conversations between whom?

A. Myself and Mr. Light, and in public gatherings.

Q. When he was present?

A. When he was present.

Q. Now please state what attitude Mr. Light expressed on those occasions, what he said, as nearly as you may?

A. Mr. Light was decidedly opposed to the grazing feature, and the operation of the Forest.

Q. What did he say, if anything, as to what his own course would be respecting the application for a permit for his own cattle?

A. That he would not make application for a permit.

Q. Now how often have you heard him say such a thing as that?

A. Many times.

Q. During what year?

A. 1907 distinctly, but I would have to look at data as to some of those meetings to know the exact date.

Q. I don't care for the exact date.

A. In 1906 or 1907 particularly.

Q. Any time in this year since the filing of this suit?

A. I don't know when the suit was filed.

Q. On April 7, 1908.

A. I don't recall any specific instance this year.

Q. Well, now——

Mr. WARD: We object to all the testimony so far given, and move that the same be stricken from the consideration of the court, on the ground that all of this is admitted by the defendant in
133 his pleadings.

Q. Did you attend the so-called public land conventions in Denver in June 1907?

A. I did.

Q. Do you know whether Mr. Light attended that, or came down to Denver at that time?

A. He did.

Q. Were you on the same train with him?

A. I was.

Q. Did you have any conversation with him on the train about forest reserves?

A. I did.

Q. What was that conversation please, the substance of it.

A. The substance is what is asked for?

Q. Yes sir.

A. In the evening coming down in the smoker of the Pullman this matter came up for discussion with reference to the forest service, and this land meeting. Mr. Light said that he had been expecting a clash. Now these may not be the words, but this is the substance—I don't pretend to — the *the* words of this conversation, but pretend to give the substance of the conversation—a clash with the Forest officers as to the grazing of his cattle; that he had——

Q. On the reserve?

A. On the reserve. That he had been served with notice to remove them or take out a permit; that he had expected the matter to come to a head but that just recently he had had a ten day extension given him which would carry the matter over the time of the land
134 reserve; that, anticipating this trouble that he had prepared for it and been named a Deputy Sheriff in that county and that he was prepared to defend the moving of those cattle.

Q. Did he then state, in substance, that he would resist their removal?

A. He said that he would treat any one attempting to move them, that is, forest officers or any one attempting to move the cattle, in the same way he would any other cattle thief.

Q. From where?

A. The national forest; it was called the Holy Cross Reserve at that time.

Q. And in that conversation he admitted, did he, that they were on the forest at the time, the cattle?

A. I think so.

Q. That was the assumption of the conversation was it?

A. He said that he had received notice to take them off the reserve but there had been an extension given.

Q. What did he say?

A. He said if the officers attempted to move the cattle that he would treat them just the same as he would any other cattle thief seen handling his stock on the ranch.

Q. Now was this remark made right in conjunction with the statement that he had been appointed a Deputy Sheriff?

A. He said that he had—perhaps these are not the words—he had taken the precaution to be named a Sheriff to be prepared for this emergency. That was the thought in connection with it.

Q. Was it only by that implication, or was it in a direct
135 reference to the use of fire arms?

Mr. WARD: We object to the leading questions.

A. As I recollect it he said he was prepared to—that he had been appointed Deputy Sheriff, and he was prepared to defend,—see that those cattle were not moved by a forest officer any more than any other cattle thief.

Q. You don't recall, then, whether there was any direct mention of shooting, or use of fire arms?

A. I don't recall those terms being used.

Q. But what would you say in respect to the meaning of the entire conversation in that regard; the impression that was left upon your mind by the entire conversation?

A. I certainly understood——

Mr. WARD: We object to the witness giving his impression; let him state the substance or the words as nearly as possible and leave the impression out.

Q. Answer the question.

A. I understood that if the forest officers attempted to move those those cattle it would be a question of whether Light got them or they got him.

Q. And when you say you understood it, do you mean that that was the substance of the conversation?

A. That was the substance of the conversation as it impressed itself upon me.

Mr. WARD: We object to the entire foregoing testimony in refer-

ence to the conversation on the Pullman sleeper for the reason
136 that the same is incompetent, irrelevant and immaterial, and was not in any manner communicated to the officials of the Government.

Q. Now, Mr. Copeland, I will ask you to state whether you have ever heard Mr. Light use any endeavors to persuade other people to abstain from taking out permits for stock upon this and other forest reserves, and if so, when and under what circumstances?

A. At different times groups of men standing on the street, and specifically at the meeting in Carbondale, the organization of which he is President.

Q. On these different occasions state what he would do, what he did and said on that subject,—the substance of it?

A. The substance of it was that if we stayed together and did not take out the permits, and would not take out the permits, that we would win out against Uncle Sam, that the grazing feature would eventually be wiped out.

Q. Did he, or did he not, advise others what to do in respect to permits?

A. He advised.

Q. And what did he advise?

A. Not to make application for a permit.

Q. Now let us get into the character of this meeting that you spoke of; what was it?

A. A meeting of the Association referred to, a called meeting.

Q. At what place?

A. The one I have had in mind now is Carbondale.

137 Q. When was that?

A. That would be,—it was following the land meeting.

Q. In 1907?

A. Either late in 1907 or early in 1908; I could tell by looking up my diary.

Q. Have you that here?

A. I have the 1908, but I think the only meeting following that land meeting; I know that it was subsequent to the land meeting.

Q. Well, that is near enough. Now who were present; how many persons and what character of persons. I don't care about the individual names.

A. I would say from—well, those present, do you mean, those who had a vote in the meeting?

A. No, in the presence and hearing of Mr. Light.

A. I would say there were forty or fifty people, at least.

Q. What character of people—their avocations?

A. Stockmen, members of the Association and representative business men of that vicinity.

Q. Vicinty of Carbondale?

A. Yes sir.

Q. How far is that from your place, approximately?

A. I don't know what the miles would be, I suppose twelve or fifteen miles, but I am not sure.

Q. Were those men the inhabitants of that valley—Roaring Fork and Sopris, that vicinity?

A. In general terms, yes.

Q. What did Mr. Light say, in substance?

138 A. He referred to what he considered the abuses of the stockmen, and timber, and farmers in the timber—proposition of gathering wood and the handling of stock as we had heretofore.

Q. He told a tale of woe in that regard, did he? Now what did he say as to the obedience of the regulation?

A. He said he had not taken out a permit and would not, and advised others to stand together on that proposition.

Q. Did you attend a stockmen's meeting at Basalt February 23, 1907?

A. I think not.

Q. You will state if you please whether it is or is not a matter of public notoriety in the Roaring Fork Valley and vicinity, that Mr. Light has taken this position adverse to the forest's interests?

A. It is thoroughly understood that way.

Q. And what is the general knowledge or reputation there with respect to his own conduct in regard to taking out permits?

A. It is understood that he has not taken out a permit.

Q. And is there any general knowledge or reputation concerning his attitude for the future in that regard as to what he intends to do, or intends not to do?

A. So far as I know only by past action.

Q. Well, this that I am now inquiring about is a matter that has, or has not come to your knowledge through report from other people and hearing others talk about Mr. Light, and what he said, and what he is going to do, as well as what he has done?

139 A. I am not sure that I catch the full meaning of your question.

Q. I mean have you heard many people speak in that vicinity of Mr. Light's attitude and his refusal and determination not to comply with the regulations in the future?

Mr. WARD: We object to the question as leading.

A. Mr. Light's attitude on that question is thoroughly understood in all that vicinity.

Q. And how do you know that?

A. By his having told us in private and in public.

Q. Often, or seldom?

A. Often last year, not so often this.

Q. And is your knowledge as to the notoriety of his attitude derived at all from what you hear other people say?

A. Partly.

Mr. KNAEBEL: That is all.

(Witness excused.)

HARRY H. FRENCH, a witness produced on behalf of the complainant, being duly sworn testified as follows:

Direct examination.

By Mr. KNAEBEL:

Q. Your full name?
A. Harry H. French.
Q. You are Supervisor of the Holy Cross Forest?
A. Yes sir.
Q. How long have you had that position?
A. Since September, 1906.
Q. When was that reserve created?
A. In August 1905, the proclamation was signed.
Q. And you live at Glenwood Springs now, do you?
A. Yes sir.
140 Q. State in what places you have resided for a number of years past, say ten years past?
A. In Eagle County, Colorado.
Q. Continuously?
A. Yes sir, up to the time I entered the Forest service.
Q. What was your business before you became connected with the Government?
A. Ranchman and cattle raising.
Q. How long have you been in the cattle business?
A. About eighteen years.
Q. In what part of Colorado?
A. In Eagle County.
Q. While engaged in that business did you make a study of cattle, their habits, and the ranges?
A. Yes sir.
Q. And the value of grasses, and the necessities of cattle from the standpoint of fodder and water?
A. Yes sir.

Mr. WARD: We object to the question as leading.

Q. Since you have been connected with the Government as Forest Supervisor what, if any, attention have you paid to cattle, and the cognate matters of feed and water, and cattle habits?
A. It becomes my duty as Forest Supervisor to make an examination of the range in order to make recommendations regarding the number of stock that should be allotted to the range within the boundaries of the Forest over which I have supervision.
Q. Do you know the defendant, Fred Light?
A. I do.
Q. And you know his ranch, where it is?
A. Yes sir.
Q. Please look at that map, Exhibit 1. Have you exam-
141 ined that before?
A. Yes sir.
Q. State whether or not it is correct?

A. It is; it is taken from the records of the Land Office at Glenwood Springs.

Q. Does it represent the situation as you know it upon the ground?

A. It does.

Q. Roughly speaking, how many times have you been to Mr. Light's place.

A. Do you mean at his ranch, or in the vicinity of it?

Q. At and in the vicinity of his ranch?

A. Not less than eight times.

Q. And in the Forest Reserve, in the portion of it appearing upon that plat?

A. I have been on that range a number of times.

Q. Have you examined it carefully?

A. Yes sir.

Q. Have you made any examination of the vacant public lands in the vicinity of Mr. Light's place, extending beyond that between his place and the Forest and to the northeast, and north and northwest of his place?

A. I have.

Q. For what purpose?

A. To determine the range, that is, the condition of the range, and also to determine the stock running on that range.

Q. When did you make such examination?

A. In June 1907. Do you want me to give the exact dates?

Q. Well approximately.

A. Also in May and June and September 1908. I want to make a correction; I said June 1908, and I meant June 1907.

142 Q. You examined it in June of each year, did you?

A. Yes sir, 1907 and 1908.

Q. Assuming that Mr. Light or any one else were to turn a considerable herd of cattle, say 100 or 150 head, on to the vacant public land lying to the northeast of his ranch where it is marked on that plat, what, in your opinion, would become of that herd, where would it ultimately go toward the grazing season if they were turned loose at the time in the Spring when cattle are customarily turned loose by ranchers in that vicinity?

Mr. WARD: We object to the question upon the ground that witness has not sufficiently qualified to answer the question.

Q. Do you understand the question?

A. Yes sir. From my experience in stock, if they were turned loose on this range northeast of Mr. Light's ranch in the early spring, by the middle of June, or latter part of June, the majority of that stock would be on a high range, which is now in the Holy Cross Forest lying west and southwest of Mr. Light's ranch.

Q. You will state your reasons for that conclusion?

A. For the reason that the range to the east and northeast of Mr. Light's place would be available for grazing only in the very early season; it is not well watered, and the character of the soil is such that it dries up very early, therefore the cattle would have to necessarily drift to higher range in order to find better forage.

143 Q. Do you know what the practice of the other ranchmen who are Mr. Light's neighbors, has been in the past three years as to the turning out of their cattle?

A. Yes sir.

Q. State what it has been?

A. Their cattle are turned out in the vicinity of Mr. Light's ranch on the lower range as early as the feed is sufficient to support the stock.

Q. When you speak of the lower range you refer, then, to what?

A. To the range contiguous to Mr. Light's ranch.

Q. That range which appears on Exhibit 1 as vacant public land outside of the Reserve?

A. Yes sir.

Q. What is the fact as to the time when grazing may go on in that locality on that range, as compared to grazing in the Forest?

A. Much earlier.

Q. For the reason that the Forest covers land that is considerably higher, and rising? Is that a fact, Mr. French?

A. Yes sir.

Q. Are there many persons who have taken out permits through you for the pasture of their stock within the Holy Cross Reserve, whose stock are turned out at or near the ranch of Mr. Light, in that vicinity?

A. Yes sir.

Q. And what has been their practice in respect to the turning out of their stock each year?

A. They would turn them out on this lower range.

Q. How did you learn that?

A. I saw two bunches of cattle turned out this spring.

144 Q. Well, I ask you if you have any knowledge through reports made to you officially by the rangers, in respect to the turning out of stock?

A. Yes, sir, stockmen notify the rangers.

Q. And they notify you, do they?

A. Yes sir.

Q. Is there any one in that vicinity except Mr. Light who has not taken out a permit? Light and his son?

A. No sir, not to my knowledge, that has stock.

Q. Now state, if you please, whether any of these persons have ever found it necessary, to your knowledge ever found it necessary to drive their stock on to the Forest in the Spring?

A. No sir.

Q. What do they do, or have they done in the past three years?

A. The stock naturally drift to the higher range. Of course there are some stragglers that will have to be driven up, that is always the case.

Q. Then, as a general proposition, is it true that all of the cattle around Mr. Light's place except his are cattle that are permitted to go by license of the Government on the Holy Cross Forest?

A. Yes sir.

Q. And how do those cattle reach the forest each year, by driving, or following their own inclination?

A. By grazing, and drifting up to the higher range gradually.

Q. What is the result upon this lower range, or vacant public lands which Mr. Light claims to use, of this general practice of using the same which is participated in by all the others; what is
145 the result upon the grass?

A. The result is that the grass is eaten off.

Q. How early in the year?

A. It begins to get short by the middle of June.

Q. What happens to it later on?

A. It dies down, dries up; the snow goes off much earlier in this lower country.

Q. Then what is the value of that lower range by the end of June, for cattle?

A. Of very little value.

Q. Suppose one hundred and fifty head of cattle were turned out by Mr. Light from the northeasterly side of his place, and kept upon the vacant public lands lying to the northeast, this lower range of unreserved lands generally; how would they have to be——

A. They would have to be herded there.

Q. Why?

A. On account of the scarcity of feed and water.

Q. And what would happen to the cattle if they were herded?

A. They would be in a very poor condition at the end of the season.

Q. Did you hear Mr. McLaren's description of that vacant land to the north, northeast and northwest of Mr. Light's between the Roaring Fork and East Sopris?

A. Yes sir.

Q. Now state whether or not that description was substantially correct, in your judgment?

A. Yes it is.

Q. You have been all over that land haven't you?

A. Yes.

Q. And what proportion of it is to be considered as an accessible range for cattle that were turned out from Mr. Light's ranch?
146 A. You speak of all of the unreserved land?

Q. Between those two rivers.

A. Between Capital Creek and East Sopris?

Q. Yes,

A. That is, the character of the country is such that cattle can graze on there,—it is not inaccessible.

Q. You mean it is not impossible for cattle to graze upon it?

A. It is not impossible for them to graze upon it.

Q. But as to water and grass, what do you say of it?

A. The forage is poor; the stock would have to go to either East Sopris or Capital Creek to get water.

Q. How would they reach Capital Creek?

A. By traveling over the road part of the distance,—county road.

Q. Well, would there be any fences in that direction?

A. Yes sir.

Q. If they got away from Capital Creek would they be in the vicinity of any good range?

A. No sir.

Q. Where would they have to go for food?

A. They would have to return to this range, or follow up Capital Creek on the county road quite a distance,—several miles.

Q. And in that event where would they finally come?

A. They would get on to the forest. There is very little open land between Capital Creek and the Forest.

Q. When does the grazing in the Forest begin to get good,—in this vicinity I mean?

A. The grazing was fairly good by the 5th of June this
147 this year—1908.

Q. After that time how does it compare with the grazing in the open range below?

A. It is a better range after that,—later in the season.

Q. Well, how much better?

A. Well, considerably; I don't know just how much it is stated.

Q. Do you notice on that map indications of two trails with a connecting trail between them?

A. Yes sir.

Q. What if anything, do you know about the existence of such a trail as that?

A. I know that there are trails on that range as shown on the map.

Q. Are they well worn trails, or otherwise?

A. They are well worn.

Q. Have you any opinion as to how they were formed?

A. By the passing of cattle over the range.

Q. State if either of those trails leads into the forest?

A. Yes sir.

Q. From your own knowledge?

A. Both of these trails, as shown on the map, lead to the forest.

Q. And state if either one of them begins, or passes close to Mr. Light's place?

A. The trail here as shown on the map, the one farthest——

Q. I don't want your testimony as shown on the map; the map speaks for itself; I am asking now what you know, independent of the map.

A. This trail begins to the north side of Mr. Light's ranch
148 at Sopris Creek, running in a southwesterly direction.

Q. Is that one of the trails you have referred to?

A. Yes sir.

Q. And the other one, where does that start?

A. There is one starting at the southwest corner of Mr. Light's ranch, or where his ranch joins Mr. Findley's. This trail leads to the south and west.

Q. Are there any indications— have you ever seen any indications on the ground that those trails have been directly entered upon by cattle coming out of Mr. Light's place, or other animals coming out of Mr. Light's place?

A. Yes sir.

Q. State what those indications were?
A. A very well defined trail at the southwest corner of Mr. Light's ranch.
Q. Where does it go?
A. It leads in a southerly direction toward the Forest.
Q. Does it go to the Forest, or stop short of the Forest?
A. It goes to the Forest.
Q. Then that is the trail marked on that map as the southerly one?
A. Yes sir.
Q. Did you ever find any cattle of Mr. Light's on the Holy Cross Forest?
A. Yes sir.
Q. On more than one occasion?
A. Yes sir.
Q. Take the first occasion; when was it?
A. The latter part of May or the first of June, 1907.
Q. What part of the forest were they on,—approximately;
149 I don't want the exact——
A. I can give you the sections.
Q. Well, that is what I would like.
A. In section 1, township 9 south, range 87 west.
Q. How were they branded?
A. They were branded "Box L" ([L]).
Q. How many of them were?
A. I mentioned two different dates. I can give you the approximate number and date,—about fifteen head, the latter part of May, 1907, and on the 13th day of June 109 head of cattle and 10 head of horses bearing the same brand as described above.
Q. Now in making those examinations when you found those cattle and horses did you ride a large or small portion of the reserve?
A. Well, comparatively small.
Q. And you don't know how many more there may have been within the reservation?
A. No sir, my impression is that the majority of the stock owned by Mr. Light at that time was on the forest.
Q. Why do you state that?

Mr. WARD: We move to strike that out because it is incompetent, irrelevant and immaterial.

Q. Why do you state that?
A. On account of finding such a large number of cattle in a comparatively small space.
Q. Well, did you then go down to the lower range?
A. Yes sir.
Q. Did you find any of Mr. Light's cattle near his ranch?
A. I found a very few to the south and west.
Q. And what character of cattle, the same as the others?
150 A. Same as the others, yes.
Q. What was the condition of the lower range at that time?
A. The lower range at that time,—I am speaking of the range

south and west of Mr. Light's ranch—where these cattle were found was about three-quarters of a mile from the forest boundary—was fair.

Q. State whether there were any evidences that the cattle within the reserve had used either of these trails?

A. Yes sir.

Q. What were they?

A. I could see that cattle had lately traveled over these trails.

Q. And where you found the cattle in the reservation, was that near or remote from the terminus of the trail?

A. It was what you might call at the terminus of the trail.

Q. Was that in Hay Park?

A. Yes sir.

Q. Did you take any steps to notify Mr. Light of the finding of these cattle there?

A. Yes sir, I notified him on the 13th day of June.

Q. Of what year?

A. 1907.

Q. How did you notify him?

A. By written notice delivered in person.

Q. At what place?

A. At his ranch.

Q. What did you notify him?

A. I don't know as I can give the exact words of the notice; I can give the substance.

Q. You delivered the original to Mr. Light, did you?

A. Yes sir.

Q. State the substance of it.

151 A. That he would be required to remove his stock inside of ten days or pay the grazing fee.

Q. What did he tell you, if anything?

A. He told me he would do neither.

Q. Did he deny, or express any doubt as to their being within the reservation?

A. Yes sir.

Q. What did he state?

A. When I first spoke to him telling him that his cattle were on the forest, he says, "I think not," he says, "My cattle are running north and east of here." At this time we were in his meadow about. I should judge, half a mile from the house, and he pointed to the range to the east of northeast of his ranch, and being acquainted with cattle range- why I naturally asked him if he had been in the habit of running his cattle in that vicinity, and he said no, that he had run his stock up this other way,—pointing towards the land included in the forest; and I asked him then how long he had ranged his cattle over on this land to the north and east, and he says, "Just this year"; and I asked him if he was herding them and watching them, and he said "No." "Well," I says, "you might tell that to a person that had never had any experience with cattle and it might have some effect, but not with me." At this he laughed.

Q. You said that he might tell what?

A. That cattle would range over there, just put over there without being herded, that was it.

152 Q. When you suggested that that was absurd he laughed?

A. Yes sir.

Q. Now do you know what length of time those cattle of Mr. Light's stayed in the forest in 1907?

A. In 1907?

Q. Yes.

A. Until the end of the grazing season, or when stock naturally work down from the higher range.

Q. Did he ever have any permit to graze in that reserve in 1907?

A. No sir.

Q. Has he any now for this year?

A. No sir.

Q. Or did he have any for this year?

A. No sir.

Q. Did Leo Light have any for this year?

A. No sir.

Q. Did Mr. Light take out any permit in 1906?

A. Yes sir.

Mr. WARD: All that is admitted, so we think this testimony is irrelevant and immaterial, about the permits.

Q. Now when did you next see any of Mr. Light's cattle in the Holy Cross Reservation?

A. In May 1908.

Q. Who was with you then?

A. Mr. McLaren.

Q. Anyone else in your party?

A. Mr. Burdick.

Q. Have you any notes as to the number of cattle you observed at that time, and who was with you?

A. Yes sir.

Q. Will you please produce those?

(Witness produces note book).

(Recess until 2 o'clock P. M.)

2 O'CLOCK P. M.

Parties present as before.

153 Direct examination of HARRY H. FRENCH resumed.

By Mr. KNAEBEL:

WITNESS: I would like to make a correction in my statement there since referring to my notes.

Q. Make it.

A. That the first visit that I made was not with Mr. McLaren and Mr. Burdick, as stated.

Q. State the particulars of your first visit in 1908 to the Light ranch.

A. On May 7, 1908, in company with Mr. Arnold and Mr. Ashlock——

Q. The same Mr. Ashlock who is here as a witness?

A. Yes sir.—I visited the vicinity of Mr. Light's ranch and made an examination of the range in the vicinity of his ranch. I paid particular attention to the condition of the range, and number of stock on the range in that vicinity.

Q. You mean you paid attention to the ranch contiguous to Mr. Light's place especially?

A. Yes sir.

Q. Now state if you please what you found in the way of cattle, and the condition of the range, etc?

A. The condition of the range at this time of the year to the east of Mr. Light's ranch the grazing was very short; I found no cattle on the range to the east and northeast of Mr. Light's place at this time.

Q. When you say east and northeast, do you refer generally to the vacant lands that run between the East Sopris and the
154 Roaring Fork?

A. Between East Sopris and Roaring Fork.

Q. How about the water conditions there?

A. There was no water only in Sopris Creek—none on the open land between East Sopris and Roaring Fork.

Q. Now proceed as to your observations further?

A. I saw quite a number of cattle on Mr. Light's ranch and a few on the outside and to the west of Mr. Light's ranch.

Q. About how many cattle, all told, did you find on the ranch and near it on the west?

A. Approximately 100 head.

Q. How were they branded?

A. All of those that I observed carefully, that is, that I was close to, were branded with "Lazy T Open A".

Q. Is that the same brand as heretofore referred to as "Lazy T V" and "Lazy V T"?

A. Yes sir, it can be read two ways, either "Lazy V T" or "Lazy T Open A".

Q. Go ahead.

A. I saw seventy-two head of cattle inside of Mr. Light's fences; I did not go into the field to examine these, but a number of them were close to the fences and those that were near the fence that I could see had the brand as described above. I saw twenty-two head on the outside to the west of Mr. Light's ranch.

Q. How far from his ranch?

A. Well, they were grazing near the fence not but a short distance.

Q. How were they branded?

A. Those that I examined were branded with the brand as described.

155 Q. Well, were they all together as though belonging to one herd, or was there anything to indicate that some of them might have belonged to some other owner?

A. Well, I didn't examine every one carefully for that, but from the condition of the fences at that time I supposed that most all of those cattle belonged to Mr. Light.

Q. Describe the condition of the fence—the place you refer to?
A. In the southwest corner there was a pair of bars that were down, open, and to the north of this were two open places in the fence also.
Q. On which side of the ranch, toward the north?
A. On the west side.
Q. Away from the forest reserve, or toward it?
A. Toward the forest reserve.
Q. How wide were the openings all together?
A. Why there was just one panel fence, I should judge sixteen feet.
Q. Sixteen feet each?
A. Sixteen feet each, I should judge approximately,—I didn't measure the distance.
Q. Their openings, all told?
A. Yes sir. The openings in the fence to the north, there was a wire fence, what we term a wire gate; that is, the wire was taken down and turned around and hung up on the fence like to admit of the ingress and egress of stock.
Q. Then it was not that the fence had been broken?
A. No, sir, it was so arranged that it could be put up very easily,
156 Q. And it had been unfastened and hooked back to do it?
A. Yes sir and the bars were down. I refer to the bars in the southwest corner.
Q. You spoke just now of the opening on the northwest side of the ranch. To make it perfectly plain, which side of the ranch do you mean?
A. On the west side.
Q. I wish you would take this map, Exhibit 1, and in pen and ink indicate those three openings you have referred to, and write the word "opening" opposite each one.
A. Where it is marked on the map where a trail starts from?
Q. Which trail?
A. The trail in the northeast quarter of section 5, town 9 south, range 86.
Q. And the other openings were close to it?
A. Yes, they were about, I should judge, not to exceed a quarter of a mile.
Q. On the same side toward the reserve?
A. On the same side toward the reserve.
Q. You spoke about that trail. Were there any indications that cattle had passed out of those openings?
A. Yes sir.
Q. State what there was.
A. By the tracks in the trail it showed that cattle were traveling back and forth over those trails at that time, the tracks were very plain.
Q. Well, from what point had they been traveling; were they going out of Mr. Light's place?

58

A. They were going out of Mr. Light's place and going
157 out on the public domain.

Q. And directly upon what, if any trail?

A. More particularly on the trail to the southwest corner.

Q. Leading where?

A. Leading out towards the forest.

Q. As marked upon Exhibit 1?

A. Yes sir.

(Photographs marked by the Examiner Exhibits 2 and 3 Complainant's Proofs).

Q. Now I show you the photographs which have been marked Exhibits 2 and 3. Pleace state if you know what they represent?

A. Exhibit 3 represents a gate in the southwest corner of Mr. Light's ranch where it joins Mr. Finley's place,—the gate that I made reference to where it was plain to be seen it had been lately used by cattle going from it.

Q. What is the other exhibit?

A. The other exhibit is a picture of the same gate taken from a different position.

Q. Do you know when those photographs were taken?

A. Yes sir.

Q. When?

A. On May 7th.

Q. Who took them?

A. Mr. Arnold.

Q. In 1908?

A. 1908.

Q. Did you make an examination of the fence on the north of Mr. Light's place?

A. Did I?

Q. Yes.

A. Yes sir, on account of finding these openings on the west side of the fence I wanted to make an examination of the fence surrounding his place to see if there were any openings in the
158 fence on the side of his ranch leading away from the forest, but I did not find them.

Q. The fence was intact was it?

A. The fence was intact.

Q. How many times did you ride up and down that fence there that day to find out?

A. Well, I made two or three trips around the fence and examined it very carefully all the way.

Q. Were there any indications on the ground, of cattle having recently passed out of the ranch on the north or northeasterly side?

A. There was not.

Q. You looked for those?

A. Yes sir, in particular.

Q. How well defined were the paths which you have referred to which you saw leading out of Mr. Light's ranch in the direction of the Holy Cross forest?

A. They were very well defined, particularly the opening to the southwest where Mr. Light's ranch joins Mr. Finley's.

Q. Was there anything from which you could tell whether those paths had been worn by cattle or by wagon, one or the other? If so, which?

A. Why they were worn by cattle.

Q. How could you tell that?

A. By the tracks and by the size of the trail.

Q. Not a wagon road?

A. Not a wagon road, no sir.

Q. You said that you examined the lower ranch on the northeast and north and northwest of Mr. Light's at that time and found the grass close?

A. Yes sir.

159 Q. You will now state what you mean by the grass being short?

A. I mean not an abundance of feed.

Q. Short in quantity?

A. Short in quantity, yes.

Q. Could you tell whether it had been over-grazed there that spring or not?

A. The range to the north and northeast of Mr. Light's place which is between East Sopris and Roaring Fork evidently had been grazed closer at that time.

Q. Well, what was there left in the way of forage; was it good, bad, or indifferent, poor or what?

A. It was very poor.

Q. You said there was no water there at that time.

A. Only in Sopris Creek.

Q. Now you will describe the condition that you found then existent of the watering place or places accessible from this range just referred to in Sopris Creek.—East Sopris Creek?

A. The only accessible water was at the north of Mr. Light's place, and the Sopris Creek runs through his ranch, and the cattle that are grazing to the west of his ranch could go in through these openings into his field and get water there and then pass back out on to the open range to the west toward the forest.

Q. Well, what I want to get at is a graphic and accurate description of the topography and other features of this watering place on Sopris Creek, so that the court may know what kind of a place it is that the cattle have to go to, and what the tendency of cattle is, whether to run back upon this vacant land, or to go else-

160 where after taking water.

Mr. WARD: We object to the explanation on the ground that it has a tendency to lead the witness.

The EXAMINER: You may answer Mr. French.

Q. (Question read by the stenographer).

A. The watering place as situated to the north of Mr. Light's place is such that the cattle grazing to the west are on the west side of Mr. Light's place.—is such that if stock would come down to this

water they would return on the range to the west, as the range to the east and northeast of Mr. Light's place at that time was not in good condition for grazing, the grass being short.

Q. Was the grass dry or green?

A. What grass there was, was green. That was very early in the season, you understand.

Q. Now when did you visit the place next, Mr. French?

Mr. KNAEBEL: Complainant offers in evidence the photographs exhibits 2 and 3.

A. On May 20, 1908, with Mr. McLaren and Mr. Burdick.

Q. State what you found, Mr. French and what you did?

A. I made an examination of the range.

Q. I wish you would particularize in every instance what you mean by "range."

A. I was going to say of the open land to the east and north of Mr. Light's ranch, which is between East Sopris Creek and Roaring Fork.

Q. What was the condition of that range at that time?

161 A. The range at this time was not in good condition, that is, there is only a scattering stand of grass on this range when it is at its best.

Q. Well, go on and state what the condition was at that time, if you please?

A. There wasn't grass enough at that time to support any considerable number of stock.

Q. What do you mean by "a considerable number of stock"?

A. Well, say eighty or ninety head of cattle.

Q. And what grass there was, was of what character?

A. Blue-stem.

Q. I don't mean the species of the grass but the character with reference to its attractiveness to cattle; its value as a forage?

Mr. WARD: We object to the question as suggestive and leading.

A. As stated before it was only in very limited quantity.

Q. You stated before what it was when it was at its best. Was it at its best at this time, Mr. French?

A. No, I would not consider it at its best at this time.

Q. Was it in good or poor condition?

A. It was not in good condition.

Q. Was it dry or was it green?

A. The soil was very dry, and the grass at that time was beginning to show signs of drouth.

Q. Were there any cattle on that range, then?

A. I found no cattle on that range.

162 Q. Any evidences of their having been there recently?

A. No sir.

Q. Was there any water on that range?

A. No sir, only in Sopris Creek.

Q. Did you look for water particularly?

A. Yes sir, I made a close examination.

Q. And where did you find any evidences of water outside of East Sopris Creek?

A. I found no evidence of any water on this range.

Q. Were there any mud holes; had there been any mud holes there?

A. There was only one place that I found where a little water might have stood early in the spring,—probably along about the 1st of April.

Q. Where was that place?

A. That was probably half a mile from Mr. Light's ranch.

Q. In what direction?

A. North and east.

Q. How many accessible places are there,—accessible approaches to the waters of East Sopris Creek from this vacant land you have just spoken of. Can you give us any idea as to how many places cattle could find ready access to the water north of Mr. Light's place,—East Sopris Creek?

A. For about a quarter of a mile from the fence down, starting where the fence crosses East Sopris, the cattle could get to water.

Q. Is it mild, or steep of descent?

A. Fairly steep.

163 Q. What is the position of the stream with reference to being readily approached by the cattle after they get down into the gulch; can they walk right into the water or would they have to seek places along the stream?

Mr. WARD: The question is leading.

A. There is one place where they could walk into the stream very *very* readily.

Q. Where is that?

A. A short distance below Mr. Light's fence on the north side.

Q. Now is that where the trails come?

A. Yes, sir, the trails, the more defined trails lead to the west from this point and south.

Q. And as you go down Sopris Creek what is the condition of its banks, and the situation of the stream in the bottom of the cañon with reference to its accessibility to stock?

A. It is very steep on either side of the stream below this point.

Q. Is there any considerable quantity of grass or feed growing within that cañon?

A. No sir, especially on the north side of the stream; there is a little feed on the south, but the hills there are covered with a very thick growth of brush.

Q. Now you testified that on the open ranges, or what you call the "lower ranges" outside of the forest, the grazing is fairly good in the earliest part of the year. Is that correct?

A. Yes, it is fairly good in the early spring, but all stock in that locality are turned out on these lower ranges, and as a

164 result this range is soon eaten off, and they have all got to drift to higher range for feed. It is a natural habit of cattle to do that.

Q. Is that true also of the vacant lands which lie between Mr. Light's place and the reserve on the——

A. On the west, yes sir.

Q. And which lie to the northwest of Mr. Light's place west of the East Sopris Creek?

A. Yes, sir, as stated, that is the condition of all of those lower ranges either west of his place or east of his place.

Q. What are the habits of the cattle, then, generally in that region when they are turned out?

A. They first range on this lower range until it is eaten out, and they keep working up to the higher range to better feed. The low range the snow goes off much earlier and dries out quicker, and of course the feed gets short because it is over-grazed, on account of all cattle being turned on this lower range.

Q. Would you say it was badly over-grazed?

A. Yes sir, I would.

Q. And has that been the habit of the stock, to your knowledge in that vicinity for years?

A. Yes sir, to be turned out on the lower range and graze that off and gradually work up to better fields.

Q. Now what would be true, in your opinion, of stock
165 which was brought in there from another place and had not become familiar with those fields?

Mr. WARD: We object to this testimony in reference to the habit of the stock and the turning out, because the witness has not qualified to state of his own knowledge about these habits and methods.

Q. (Question read by the stenographer).

Mr. WARD: We object for the reason that the witness has not qualified himself to express an opinion of value upon such subjects.

Q. Answer the question, please.

A. My opinion would be the same. Cattle turned out on this lower range would work up to the higher range where the feed is better.

Q. What makes you think that would be true?

A. That is the natural habit of cattle.

Q. What, if any, influence do the actions of the cattle which had lived in that locality before, have upon the actions of cattle newly brought in?

A. Well, that would tend to lead the cattle up there; they would work up with the cattle that were accustomed to the range.

Q. Now with respect to the forest itself, you will please state whether you have examined the region covered by Exhibit 1 for the purpose of ascertaining whether it has been grazed more than
166 it ought to be,—over-grazed?

A. (Witness referring to map) I found——

Q. Have you examined it, I say?

A. Yes sir, I have examined this range and I find that the lower portions of the range near the boundary line have been over-grazed.

Q. In the forest?

A. In the forest the same as it is on the open domain below the forest lines.

Q. And how about other portions of the reservation which afford a range for cattle turned out in the vicinity of Mr. Light's ranch?

A. I found that all of this lower range is over-grazed, if I understand the question.

Q. No, other portions of the reservation; you spoke of certain portions of the reserve that were about as bad as the open range on the east of it. Now how about other portions of it?

A. On the higher range I found the feed much better.

Q. And the water up there is——

A. There is sufficient water on the forest at any point as shown on this map.

Q. Do you know officially whether the Secretary of Agriculture has designated the maximum number of cattle that may be allowed to graze for the present year within the Holy Cross forest?

A. Yes sir.

Q. And did he designate a maximum number for last year?

A. Yes sir.

Q. Now is this portion of the reservation exhibited on Ex-
167 hibit 1, a portion of the grazing district of that reserve?

A. Yes sir.

Q. You will state what the tendency of over-grazing any portion of the forest reservation is in respect to the grass supply, and the re-forestration conditions,—the tendency of over-grazing?

A. Where a range is over-grazed, too closely grazed, it will practically kill all of the grass; in places the soil will become barren, and will wash, erode.

Q. And what is the result of that in course of time upon the grazing value and the possibilities of that portion of the forest in the way of sustaining a new growth of trees?

A. It practically destroys the value as far as grazing is concerned, and will also retard or destroy the chances of reproduction for timber.

Q. What effect does it have upon the soil to have the grass eaten off year by year excessively?

A. It will destroy the productive qualities of the soil, because if it is eaten and tramped out bare in that way, the soil will naturally wash away by the rains,—the action of the weather.

Q. Have you observed such places as that in places on the reservation?

A. Yes sir, I noticed some places on the reservation where it has been over-grazed, and there is practically no feed, or very little; what feed is there is weeds; the native grasses have been killed out.

168 Q. State whether or not the full number of cattle which can properly be supported upon this particular region of the reservation has already been assigned to that portion from among the cattle that are licensed, and permitted through the compliance by their owners of the requirements of the regulations?

A. Yes, the full number have been allotted.

Q. So that the introduction year by year of Mr. Light's cattle into this district results in what?

A. It results in over-grazing on the lower range, and also in the land included within the forest.

Q. What result does it have upon the realization by those who comply with the regulations and the law, of their full enjoyment of the grazing privileges which they pay for?

A. It results to their detriment, as it makes it very hard to properly distribute the cows and handle them on this portion of the forest.

Q. Now you will state how, please, Mr. French?

A. On account of a portion of the stock that run on there that are not permitted stock; by "permitted" I mean those that a permit has been issued for, for grazing, and on account of Mr. Light not complying with the regulations it makes it difficult to administer this portion of the forest.

Q. Won't you please state how?

A. Under the regulations the cattle are to be salted and properly distributed on the range, and so handled as to not over-graze any particular portion.

169 Q. Well, how does that affect other people, to let Mr. Light's cattle come in there, when he don't comply with any regulations?

A. It makes it very difficult to compel other people to follow the regulations closely.

Q. In what respect?

A. In regard to places where they should put their cattle.

Q. And what effect does it have upon the preservation of the grass in the lower portions of the forest range for use in the fall, by cattle returning from higher levels?

A. Well, as a result the lower range is eaten and grazed too closely.

Q. Now you visited that place again in 1908?

A. Yes sir.

Q. When was that?

A. On June 4, 1908.

Q. Mr. French, did you go to the ranch then, again?

A. I can read the notes, or I will——

Q. You may give your recollection of what you did, and what you saw, and if you need to refresh your recollection from notes made at any time, you may do so.

Mr. WARD: They were made at the time, were they?

WITNESS: Yes sir.

A. On June 4, 1908, Mr. McLaren and Mr. Burdick and I rode over the range in the Holy Cross forest. This was in township 9, south range 87.

Q. Was anyone else along?

A. Mr. McLaren and Burdick.

170 Q. Did you all go together?

A. Yes sir, we rode to the forest line together, and then

we separated there; McLaren and Burdick rode together and I rode on by myself.

Q. Did you cover the same or different ground?

A. I covered different ground; and the stock that was seen by me was not seen by Mr. Burdick and Mr. *Mr.* McLaren.

Q. How many stock did you see, of Mr. Light's?

A. I saw ten head.

Q. Of what brand?

A. Branded "Lazy T Open A" and "U Slash U", besides a number of other stock of various brands belonging to people in that vicinity.

Q. Did you see any horses of Mr. Light's?

A. No I didn't see any horses at this time.

Q. How was the grazing in the forest then as compared with the grazing in the range below?

A. The grazing in the forest was better than on the lower range.

Q. How much better?

A. It was considerably better; the range near Mr. Light's place, or to the north and northeast between Sopris and Capital Creek was very poor at this time, and also the range to the west of Mr. Light's place was not as good as the higher range, or that inside of the forest.

Q. Were there any cattle that you could see on the lower range at that time?

A. I saw a few head on the west side of Mr. Light's place.

Q. About how many?

171 A. At this time we found twenty or thirty head of cows in section 1, approximately in section 1, township 9, south range 87.

Q. That was June 8th?

A. June 5th.

Q. Now that was before the heat had dried up the grass on the lower range completely?

A. Yes sir, completely. I didn't quite finish that.

Q. All right; go ahead.

A. I was going to state, there were twelve head of Mr. Light's cattle, or cattle bearing the brand "Lazy T. Open A", this bunch of cattle found in section 1.

Q. Could you tell whether they were working toward the forest, or away from it, or anything about it?

A. The stock at that time were all working toward the forest. On that date there was some of these cattle that bore these brands that were found very high on the range, up nearly to the snow line. It shows that the natural tendency of stock, even though not acquainted with the range, would be to work up on the higher range.

Q. What difficulty have you had in persuading the owners of stock permits in this region to salt, for the purpose of making a proper distribution of their stock?

A. Well, some refused to put salt up on the forest, put the salt on the outside of the boundaries, on the low range.

Q. Your last visit was when, Mr. French?

A. On September 6th I think. I will have to refer to another book for that. On September 5th and 6th, 1908, I visited it.

172 Q. Now state the condition that you found them in, and what you did,—in your own language?

A. I went on this range more in particular to examine the range, and also to see what stock were ranging on the forest.

Q. What did you find?

A. I found a few of the cattle branded "U Slash U", and "Lazy T V" on the range, and a considerable number of cattle bearing other brands, and——

Q. What range?

A. This is inside of the Holy Cross forest in township 9 south range 87 west. I found that the lower portions of the range——

Q. What range?

A. Near the boundary lines of the forest.

Q. In the forest or out of it?

A. In the forest and immediately out had been very badly overgrazed, but the farther, the higher in the forest on the range that I examined I found the feed better.

Q. You will state whether the rain during August last was more than usual or not?

A. We had an unusual amount of rain during the month of August.

Q. What result did that have?

A. That had the result in making the lower range better than usual.

Q. In September usually what is the condition of the lower range?

A. It is very poor.

Q. Well, what is the effect upon the cattle drifted up into the forest; do they stay up, or have they a tendency to come back?

A. They have a tendency to drift down as the nights begin

173 to get cool.

Q. What is the effect of the range if worn out, or dried out and poor? Are they more likely to come out when it is poor or good; are they more likely to come out a year like this than other years?

A. Yes, they would be more likely to come out where there had been an unusual amount of rain toward the late part of the summer.

Q. Did you ride the same range that last visit, that McLaren and Ashlock did?

A. No, not the same range, that is, I wasn't with them all the time, they rode over a different portion of the range.

Q. You divided for the purpose of not counting the same stock?

A. Yes, sir, and making as complete an examination of the range as we could.

Q. Have you ever heard Mr. Light express what his intentions are in respect of the use of the National forest, about taking out any permit or paying any tax,—fee?

A. Yes sir.

Q. Please state the occassions when you have heard him say anything on the subject?

A. I have talked with Mr. Light a number of times, and I have also heard him make statements in public meetings.

Q. Where?

A. In Carbondale and in Basalt; that he would not make application for a permit, and persuaded others to not make application for a permit, in these meetings.

174 Q. Were they meetings of stock men?

A. Yes sir.

Q. When were such meetings held, if you know, when he made statements of that sort and endeavored to persuade people.

A. One meeting in particular was at Basalt.

Q. When?

A. February 23rd, 1907,—I think that was the date; I could tell by referring to my notes the exact date.

Q. Was anything signed at that meeting?

A. Yes sir.

Q. What was it?

A. It was a sort of an agreement or resolution framed up, that parties signing this would agree to not make application for permit or pay the grazing fee.

Q. Who instigated that, if you know; or did Mr. Light, rather have anything to do with it?

A. Yes, Mr. Light I think had more to do in regard to getting up these resolutions than anyone else.

Q. What makes you say that?

A. Because he took the lead in the meeting and in the speaking.

Q. Advocating it?

A. Advocating it. He said he didn't intend to make application for a grazing permit, and he didn't want anybody else to.

Q. Well what was said in respect of the use of the land; were these statements of his coupled with the statement that they would not avail themselves of the use of this land of the United States?

Mr. WARD: Defendant objects as leading.

Q. Do you understand the question?

A. No, please put it again.

175 Q. (Question read by the stenographer).

A. I don't know as I could state the exact words that Mr. Light used, but, in substance, it was this—that the Government had no right to collect this fee and it was unconstitutional, and for this reason he would not make application for a permit or pay a fee; that the cattle would be allowed to drift wherever they saw fit.

Q. Do you recall any more recent occasion upon which Mr. Light has made any similar statement?

A. At the time that I served notice on him, that was later, that was in June.

Q. Last year?

A. Last year, June 1907, he said that he would not make application for a permit.

Q. Do you recall any more recent expressions of a similar character upon his part?

A. Not lately I haven't heard him say anything regarding it.

Q. Not since this suit was begun?
A. Not since this suit was instituted.

(Plat marked "Exhibit 4, Complainant's Proofs.")

Q. Did you state how many cattle of Mr. Light's you counted on the reservation on the 6th of September last?
A. I don't think that I did; I am not certain.
Q. Well now state it, please.
A. I will have to refer to my notes.
Q. Well, please refer to your notes.

A. (Witness refers to notes.) I found eight head that
176 were branded "U Slash U" and "Lazy T Open A".

Q. Mr. French, please examine the paper Exhibit 4.
A. There were four head of the "U Slash U" and four head of the "Lazy T Open A".
Q. Please examine the plat and executive order marked "Exhibit 4" and state whether or not that is a duplicate of the official copy of the order of the President of July, 1908, with the attached plat defining the boundaries of the Holy Cross forest. Just look at the order and say.
A. Yes sir, it is.

Mr. KNAEBEL: We offer this in evidence.

Q. That represents the reservation under your charge as Supervisor?
A. Yes sir.
Q. And how many field men do you have assigned to your control for the guarding and inspection of this large body of land,—approximately how many men?
A. Thirteen.
Q. Now would it be feasible with the number of men at your disposal and the moneys appropriated for the purpose, to keep up a constant patrol of the boundaries of that reservation, for the purpose of ascertaining when stock are not licensed and entered, and when they came out, and keeping close track of the number of those which stay in there, and the damage they did?
A. It would not; it would not be feasible.
Q. Would it be possible?
A. No sir, not with the limited number of men that we have, and the other work.

177 Q. And is that one of the reasons that the stock usually—trespassing stock as well as licensed stock—enter from time to time in bunches at different places and go out at different times; is that one of the reasons?
A. Yes sir.
Q. Has there been any comment in the vicinity of this reservation among those who use it by permit for their stock, concerning the talk and attitude of Mr. Light?
A. Yes sir.
Q. For how long a time?
A. Well for the past year.
Q. And I will ask whether his attitude concerning the permit sys-

tem and his refusal now or in the future to take out a permit for his own cattle, are matters which have become generally notorious in that region?

A. They have.

Q. Have you had any difficulties in your administration of this reservation on account of it?

A. Yes sir, it has been very difficult to get other stockmen to take out permits for this reason, that Mr. Light has been running his cattle on the forest reservation without a permit and defying the regulations.

It is hereby stipulated by and between the parties hereto that Exhibit No. 5 is an official copy of the Use Book of the Department of Agriculture concerning the use and occupancy of forest reservations, approved by him June 3, 1907; and that exhibit No. 6 is a like copy of the said Use Book as thereafter revised, and containing the regulations of the Secretary of Agriculture concerning the forest reservations and the use and occupancy thereof, as approved by him June 3, 1908. That either side may refer to and use at the final hearing of this cause, and in any subsequent proceedings, by appeal or otherwise, such portion of said exhibits, or either thereof,
178 as they may desire; but that in the event of an appeal, or appeals, only the portions used upon the final hearing shall be printed, or in lieu thereof it will be stipulated of record that copies of the said Use Book printed by authority may be employed by the Judges of the appellate court in connection with the transcript of the record.

Cross-examination.

By Mr. WARD:

Q. Mr. French, how long have you lived in Colorado?

A. Since 1885.

Q. What portions of Colorado have you lived in the last ten years?

A. Eagle County.

Q. Have you ever lived in Pitkin County?

A. A short time after I entered the forest service.

Q. Did you ever do any cattle business in the western part, on the western slope?

A. Yes sir.

Q. What year or years?

A. Approximately for the last eighteen years prior to my entering the Government service.

Q. How large, on an average, has your herd been?

A. From fifty to three hundred and eighty head.

Q. When was that herd as large as three hundred and eighty head?

A. In 1893.

Q. Upon what range did you have your herd then?

A. What is known as the Sheephorn and Piney cattle range.

Q. In what county?

A. Eagle County.

Q. How are the range conditions of Eagle County in comparison with the range conditions of Pitkin County; are they in —
179 way similar in some respects?

A. Yes.

Q. Does blue-stem grow in Eagle County?

A. Yes sir.

Q. On the range that you used?

A. On portions of it.

Q. How was the water in Eagle County as compared with water in the territory around the Light ranch, on your range in Eagle County?

A. Much better.

Q. As a stockman, Mr. French, is it injurious for cattle to travel more than a mile for water while on the range?

A. That depends entirely on the topography of the country.

Q. In the ordinary range down the Roaring Fork Valley, would cattle that would travel two miles for water—would that amount of travel be injurious to the animal?

A. Yes, in a mountainous country I would think it would, I know it would.

Q. How far could they travel in a more open country without harm?

A. They possibly could travel three miles, maybe farther.

Q. Do you know of any herds that were successfully handled where they had to travel for more than one mile to water in the western slope?

A. Yes, I think there are places where stock is ranged that they possibly would have to travel more than a mile for water.

Q. But in your opinion, if the stock should have to travel, say, two or three miles in a country similar to the country around Mr. Light's ranch that stock could not be successfully handled?
180 A. No sir.

Q. So that, according to your opinion, stock could not be successfully handled in the territory around Fred Light's ranch were it not for the grazing upon the mountain sides. Is it your opinion that if they could not use the mountain sides they could not successfully handle stock in the country around Mr. Light's ranch?

A. Could not,—successfully?

Q. Yes, if they were shut off from the forest reserve would it be possible to handle stock successfully in that territory?

A. No sir.

Q. Do you know anything about the stock-raising in this territory along ten or fifteen years ago?

A. No sir, not by personal observation. You refer to Roaring Fork Valley?

Q. Roaring Fork Valley.

A. Yes sir.

Q. Do you know from your general information, matters of public knowledge, whether or not there were many cattle raised in the Roaring Fork Valley in years past, before the forest reservations were established; have you ever heard anything to that effect?

A. Yes sir.

Q. Hasn't that territory been considered in years past as one of our leading western stock-grazing regions?

A. I think not.

Q. But it is your understanding that there have in years past been considerable cattle handled along the Roaring Fork Valley?

A. Yes and there still is.

181 Q. You don't know whether when those cattle were handled in years past they used the portion of the mountain sides now embraced in the forest reserve. You don't know anything about that?

A. From my experience in the cattle business I would say that they did.

Q. Yes. You would think so?

A. Yes sir.

Q. You would consider, then, practically the entire Roaring Fork Valley,—I mean outside of the forest reserve—as poor range on account of the scarcity of water?

A. Not alone on account of the scarcity of water, but scarcity of feed.

Q. But as to the water of that range you would consider it a poor range, would you, because cattle would have to go more than a mile sometimes to water?

A. Portions of it they probably would have to go over a mile.

Q. So that any range in a rough country, such as is in that valley, where cattle are compelled to go from one mile to two miles or three miles to water, you would consider it a poorly watered range?

A. Yes, impractical.

Q. When cattle go for water do they go up the mountain for water or down the hill, ordinarily?

A. When they go for water?

Q. Yes, when they start after water?

A. That depends on the position of the cattle, whether they are below the water or above it.

Q. Are there no places in Colorado on the western slope where they are compelled to go up the hill for water?

A. Some places they have to go up the hill, and some

182 places they have to go down.

Q. There is no scarcity of water in East Sopris Creek itself, is there; there is an abundance of fall there of water?

A. Yes sir.

Q. It never goes dry?

A. Not to my knowledge it never has.

Q. It has had a good, strong flow during the years that you have seen it?

A. Yes sir.

Q. And the only trouble would be the steep banks?

A. Yes sir.

Q. Steep sides for the cattle to get into?

A. Yes sir.

Q. I understood you to say that there was about a quarter of a

mile of East Sopris Creek, about northwest from Mr. Light's most northerly fence, that was of easy access to water for cattle?

A. Approximately.

Q. What is your opinion, Mr. French, that, eliminating that quarter of a mile, otherwise it is practically impossible for cattle to get water out of either East Sopris Creek or Sopris Creek proper? Is that your opinion?

A. I do not say it was impossible for them to get water.

Q. Well, is it practically impossible, or is it simply difficult?

A. Difficult.

Q. You think that a cow that was grazing near the junction of Sopris Creek and the East Sopris Creek could get water there without going away back to Mr. Light's fence?

A. At the junction of East Sopris Creek?

183 Q. At the junction of East Sopris Creek,—a cow that was grazing, would it go down to get water there, or would it go back to where it was easier? From your knowledge of cattle's habits, would it come down and get water there, or would it go back and get water there?

A. I think a cow would go to the nearest place to get water.

Q. So that the steepness of the banks of East Sopris Creek and Sopris Creek you think would not prevent cattle grazing in that vicinity from getting what water they need?

A. I did not say that the water was—that the stream was so that it would be impossible for cattle to water; there is water at a number of places.

Q. Do you think that the inaccessibility of water is such as to have a tendency to drive the cattle away from that neighborhood, by itself?

A. Not water alone; it would be a scarcity of feed.

Q. So, then, I do not understand you now to say that you consider the range northwest and north, and northeast of Fred Light's ranch as being poorly supplied with water; or do you consider it poorly supplied with water?

A. Yes sir I do.

Q. There is hardly any portion of the range just described that is more than a mile from water in a straight line, is there?

A. In referring to the range, what range do you mean?

Q. I have just described it as being north and northeast and northwest of Fred Light's ranch for a distance of two or three and

184 *five* or six miles?

A. There are places where it would be over a mile.

Q. How much over a mile, approximately,—as much as two miles?

A. Yes, I would think so, approximately.

Q. Where would that be, approximately, on the map?

A. That would be rather a difficult matter to state the particular points on that entire range that it would be two miles from water.

Q. The most of the range would be within a mile and a half of water, wouldn't it?

A. I should say so.

Mr. KNAEBEL: May I ask now whether you refer to the distance in an air line, or the distance that the stock would have to travel?

Mr. WARD: I refer to the distance in an air line.

WITNESS: Stock don't travel,—don't take that course.

Q. But a cow in this territory one mile away from water in an air line might travel two miles to get in there, wouldn't she?

A. Yes, she might on account of the steepness.

Q. And, in your opinion, that would be injurious to the cow?

A. Yes sir.

Q. This is the result of your experience in the cattle business in Colorado?

A. Yes sir.

Q. The map that we had reference to, I understood you to say was a correct representation of the land and streams in the vicinity of Mr. Light's ranch. Is that what you said?

A. The correct showing of the land and the streams are approximated.

185 Q. The correct showing of the land and the streams are approximated. And do you want us to understand that the trails which were marked there yesterday are accurately depicted, or approximately?

A. Approximately.

Q. You heard the testimony of Mr. McLaren this morning as to where the trail started from East Sopris Creek, did you not?

A. Yes sir.

Q. What is your recollection of where those trails started from East Sopris Creek, running westerly and southwesterly, in reference to Mr. Light's north fence where it crosses East Sopris Creek?

A. The trail starts at a point at a short distance north of Mr. Light's fence and crosses East Sopris Creek.

Q. Mr. French, what do you mean by "a short distance," a hundred yards or half a mile?

A. Half a mile is not a short distance,—not to exceed a hundred yards.

Q. Now please look at complainant's Exhibit 1. Is the trail located there on the section line between sections 29 and 32; is that a correct transcript upon the plat and map of where that trail really starts?

A. It is approximately correct.

Q. About how much incorrect,—a quarter of a mile?

A. Do you mean in regard to legal subdivisions?

Q. No, in regard to Mr. Light's fence; is that point a quarter of a mile off from where it should be? Right here at this point (indicating on plat) you say it was right close to Mr. Light's

186 fence; that is a point on the map which is on the section line between sections 29 and 32 where the trail leaves East Sopris Creek, and Mr. Light's fence, according to the plat is probably more than a quarter of a mile southeasterly from that point, according to the plat. Is that correct?

A. I don't know the exact location of the section line at this point,

but the trail leaves East Sopris a short distance from Mr. Light's north fence not to exceed twenty rods.

Q. Now if Mr. Light's north fence is upon his own land, as marked in the plat, the tracing of the trail is about a quarter of a mile out of the way, is it not?

A. As I stated, not knowing the exact location of the section lines I could not state.

Q. I am asking you, Mr. French, as to what this plat shows.

A. In approximating the location of the trail on the plat, a person can very easily make a mistake in a quarter of a mile.

Q. And it is a mistake of a quarter of a mile according to the plat; does that seem right to you?

Mr. KNAEBEL: I object to the question as unintelligible.

Q. Mr. French, do you understand what I mean by these last few questions?

A. Why no, I don't know that I do.

Q. What I mean is, does that plat correctly show the location of the trails, according to your remembrance of the trails?

A. It seems to me I answered that very plainly when I
187 said I didn't know the exact location of the section line there where the trail started.

Q. I didn't ask you that; I say does that show the correct location, or do you know anything about it?

A. Yes sir, I know where the trail starts.

Q. And I understood you to say it starts close to Mr. Light's fence?

A. A short distance.

Q. Does it show it stops a short distance from Mr. Light's fence?

A. That does not show Mr. Light's fence.

Q. You are unwilling to state whether you think that is correct or incorrect?

A. I think it is approximately correct, as stated before.

Q. Within a quarter of a mile?

A. A quarter of a mile ought to be approximately correct in describing a trail which runs a distance of two or three miles over a rough country.

Q. Would you consider that a quarter of a mile mistake, as to whether a cow is on the forest reserve would make any difference?

A. Surely.

Q. Would you consider a quarter of a mile would make any difference in that territory whether he was on the forest reserve?

A. I certainly would.

Q. But it don't make much difference to the trails?

A. The forest boundary line is very plainly marked. The section line is not marked at this point.

188 Q. Now, Mr. French, you spoke of a trail running out of the southwest corner of Mr. Light's ranch; will pou please indicate on that map where the southwest corner of Mr. Light's ranch is, and give it, if possible, by a forty quarter section. What does

that heavy line enclosing,—what does that represent (indicating on plat).

A. That represents Mr. Light's patented land.

Q. And where would be the south line of Mr. Light's patented land on that map?

A. It would be in section 8, town 9 south range 86.

Q. Now in the testimony where you spoke of the open bars and the trail being on the southwest corner of Mr. Light's ranch, you didn't have reference to that corner of the ranch in section 8?

A. No sir.

Q. Now give as nearly as you can by legal subdivision, the location of what you meant by the southwest corner?

A. Near the section line between sections 32 and 35 in town 9, range 86.

Q. How far from the southwest corner, approximately, from section 32,—I mean the southwest corner—approximately how far?

A. I should judge not to exceed a quarter of a mile.

Q. And the photographs Exhibits 2 and 3 represent an opening in the fence at approximately the point last mentioned?

A. Yes sir.

Q. You saw at that place a fence running in a northerly direction?

A. Yes sir.

189 Q. Upon Mr. Light's land, or near to his land?

A. Yes sir.

Q. And that was the fence that you spoke of having two openings in that had been broken, or been——

A. Not broken, they had been opened.

Q. They had been opened. Did you notice any fence inside of Mr. Light's land running in a northerly direction to the east of the first fence?

A. Yes sir.

Q. Were there any openings, broken places in that fence?

A. I didn't examine that fence.

Q. Was it the purpose of your examination, Mr. French, or did you have no purpose otherwise than to tell the truth, to testify only about the outside fence and not about the inside fence?

A. About his division fences on his ranches?

Q. Yes. You didn't think about that division fence when you were testifying on direct?

A. He has a number of division fences on his ranch,—very large ranch.

Q. I know that. But you made no examination of the division fence running practically parallel to this first outside fence that you speak of?

A. No, sir, I did not.

Q. And if there were openings there you didn't see them?

A. No sir.

Q. Mr. French, did you examine the fence along the road leading down East Sopris Creek about, a little to the north—I mean north, or a little bit to the east of north from Mr. Light's dwelling house?

A. Yes sir.

190 Q. Did you see any openings there on the 7th of May, 1908?

A. I did not.

Q. Was there a gate along that road that was open on that day?

A. There was a gate right by Mr. Light's house in a lane.

Q. But up to the north of Mr. Light's house along the road about a quarter of a mile from where the north fence crosses the creek, did you not see a gate opening out to the northeast upon that mountain side?

A. I did not.

Q. Did you see that gate open there on the 8th of May?

A. No, sir.

Q. Did you see myself and Mr. Johnson that day driving around that country?

A. I saw you on Mr. Light's ranch, at the house.

Q. And that day you passed along that road, didn't you?

A. Yes sir.

Q. But you didn't see the gate that day, open?

A. There was no gate open when we passed along there.

Q. There was no gate open when you passed along there?

A. No sir.

Q. You spoke of some cattle within Mr. Light's enclosure. Where were those cattle in reference to the road northeast of Mr. Light's dwelling house and East Sopris Creek, within Mr. Light's enclosure?

A. They were distributed all over the enclosed land, on his meadow land.

Q. On the bottom land?

A. Yes sir.

Q. Did you see any cattle in the strip of land between the most westerly fence on the western side of Mr. Light's ranch and

191 the parallel fence running north inside?

A. Yes sir, I saw some on the west side of the creek.

Q. Within that enclosure? Maybe you didn't understand me.

A. Yes, I understand the question. I saw cattle east of the west fence.

Q. Mr. French, in which direction does that fence run, in the background of the picture, marked Exhibit 3?

A. This fence here (indicating on photograph)?

Q. Yes, which direction does that run?

A. In a southwesterly direction.

Q. Whose fence is that?

A. Mr. Findley's.

Q. And there are fences, Mr. French, that are continuations of Mr. Findley's fence running approximately parallel to East Sopris Creek for several miles in a southwesterly direction from these bars you have spoken of?

A. Yes sir.

Q. How near to the forest reserve do these fences run along East Sopris Creek?

A. Where this fence begins at this pair of bars it is approximately——

Q. I mean how far up this creek do the fences go before they stop?

A. I was going to describe it.

Q. Go ahead, then, and describe it.

A. This point (indicating) would be approximately two miles from the forest line, and the fences run in a southwesterly direction, possibly within a mile and a half of the boundary of
192 the forest, and at the farthest point south they are nearer possibly three-quarters of a mile. Now those distances are approximate; I have not measured them.

Q. Mr. French, you spoke of serving a notice upon Mr. Light, I think, in the nature of a trespass notice, telling him that he should pay, and so on. When was that, or about, approximately?

A. The 13th of June, 1907.

Q. Did you at that time, or have you since that time ever told Mr. Light that if he didn't pay these fees he would forfeit all rights to graze upon the forest reserves?

A. I have not.

Q. Have you authorized any of your subordinates to tell Mr. Light that?

A. I have not.

Q. Is it a fact,—if it is permissible to show the rules and regulations—that Mr. Light has forfeited all privileges of the reserve?

A. Please state that again.

Q. Is it a fact,—if it is permissible for you to divulge the rules and regulations of your Department—that Mr. Light has forfeited all privileges of ever grazing upon the forest reserve?

A. I haven't authority to make that statement.

Q. Mr. French, you have spoken several times about the examination of this range in view of looking at the water supply and the forage and grass. When was the first time you made such examination of the range in the neighborhood of the Light ranch?

A. In 1907.

Q. What date, approximately?
193 A. The latter part of May or first of June, I think.

Q. Did you make any more examinations that year with that special object?

A. A few days later in June I did.

Q. And when did you make your first examination of this range in 1908?

A. 1908.

Q. Yes.

A. On the 6th and 7th of May.

Q. Would you call that early spring, the 6th or 7th of May?

A. No not early spring.

Q. You have testified a number of times that in the early spring the grass upon this range was fairly good, or at least better than later in the summer. When did you ever make an examination of this range in the early spring.

A. I did not make any examination of the range earlier than the date stated.

Q. You have spoken several times of the neighbors and ranchmen in the vicinity of Mr. Light's ranch, all turning out their cattle in the early spring upon the range that we have heretofore spoken of as north, northeast and northwest of Mr. Light. Do you know anything of that, of your own personal knowledge?

A. Of their turning their stock upon this range?

Q. Yes.

A. Yes sir.

Q. Who beside Fred Light has ever turned their stock in the early spring, or any other time, upon the range to the north or northwest of Mr. Light's ranch?

A. A number of stock men living farther down Sopris
194 Creek turn out their stock in that vicinity and they drift up that way.

Q. But I understood you to say that they had turned their stock out there on this range in the early spring, not that the cattle drifted there, but I understood you—I may be wrong—that they turned them out on this range?

A. Mr. White, a stock man living in the vicinity of Mr. Light's,——

Q. How far from Mr. Light's?

A. His land joins Mr. Light's on the east.

Q. He has turned out cattle, has he, on that range?

A. To the west of Mr. Light's ranch.

Q. When?

A. Rather late in May.

Q. What year?

A. 1908.

Q. Would you call that early spring?

A. No.

Q. Has Mr. White a permit to graze upon the forest reserve?

A. He has.

Q. Who were there besides Mr. White who have done this?

A. Mr. Finley also turned some stock out there.

Q. When, Mr. French?

A. Some time in May; I could not give you the exact date.

Q. Where did he turn them?

A. In the south and west of Mr. Light's ranch.

Q. But not upon the range to the north and northwest of Mr. Light's ranch?

195 A. No, not to the north of Mr. Light's ranch.

Q. Can you name anyone else who has turned his cattle out upon the range described, besides Mr. White?

A. I could not state every one, as I have not been on the range the entire time.

Q. I understood you to testify that the custom of the neighbors was to turn the cattle out, to eat off this especial range first, and then to utilize the forest reserve under that permit; is that a correct understanding of your position?

A. When cattle are turned out in the spring of the year they

do not stay on the exact place where they are turned loose; they drift around over the range,—use the entire range.

Q. So then, they were not turned out on that range, but simply turned out in the valley and they drifted around?

A. Any range adjacent to Mr. Light's place; they were turned on ranges adjacent to his ranch.

Q. What do you mean by "adjacent," within six or eight or ten miles?

A. I mean within two or three miles.

Q. Who else besides Mr. White has turned out cattle within two or three miles northwest or north of Mr. Light's ranch?

A. As stated before, I could not tell every party, as I have not been on the range the entire time.

Q. So your statement in reference to the habits of the neighbors is, at the best, on hearsay and information?

A. Partly, and partly from personal observation.

196 Q. Whom did you observe personally?

A. I saw Mr. White drive his stock on it.

Q. So that was based on Mr. White?

A. Yes; also saw Mr. Finley driving his stock up on the range.

Q. But not upon the range line—his ranch was to the west?

A. He would naturally turn his cattle out near his ranch to the west.

Q. How long did Mr. White leave his cattle there; did he not drive them on up toward the reserve?

A. No sir, not to my knowledge.

Q. Mr. French, how does the range along the Roaring Fork Valley outside of the forest reserve correspond to the usual ranges on the western slope; is it about the same, or is it poor, or better?

A. It is about the same as the range at that altitude.

Q. So there is nothing especially difficult about this range, either in the grass or in the water, or in the topography of the country, is there?

A. Especially difficult?

Q. Yes, for cattle to subsist on, more than the usual range in that western slope?

A. Yes sir, this lower range is over-grazed,—badly over-grazed.

Q. How much of that range have you examined to know that it is badly over-grazed?

A. I have ridden over considerable of it.

Q. I understand you to have said that on several occasions when you were riding over the range you saw no cattle upon the

197 range to the north or northwest of Mr. Light's ranch?

A. I did not say that; I said to the north and northeast.

Q. To the north and northeast?

A. Yes sir.

Q. But you have seen cattle to the northwest, haven't you?

A. To the northwest and to the west.

Q. Have you seen any of Mr. Light's cattle to the northwest, or did you notice?

A. Yes sir.

Q. It is easily possible for cattle belonging to Mr. Light, if turned out on the northeasterly side of his ranch, to graze and drift over to the northwest in the direction of Carbondale?

A. No sir, the natural tendency of the stock would be to drift to the southwest.

Q. I didn't ask about the natural tendency; I asked was it easily possible for them to do it?

A. They could.

Q. Are there any difficulties in the way other than instinct, or habit?

A. Yes sir.

Q. What difficulties?

A. On account of feed.

Q. So you think that the food is so sparse that a cow would be liable to starve to death going across the country?

A. No sir.

Q. How far would they have to go from the range north of Mr. Light's ranch before they got good feed, in a southwesterly direction?

A. It gets better gradually as you go to the higher ranges.

Q. Is there any tendency for grass to come out more early
198 on the southern exposures of hills and mountains than upon northern exposures?

A. Yes sir.

Q. On what are the exposures of the Holy Cross Reserve southwest of Mr. Light's,—in which direction do the mountains slope?

A. They slope several directions.

Q. Yes, several directions, but the general trend; do they slope with the southern exposure or eastern exposure, or northern exposure?

A. A portion of that range slopes to the south and east, and a portion to the north.

Q. Well, all the range, within reach of Mr. Light's slopes to the south?

A. I don't mean the entire country slopes to the south, but there are ridges of course.

Q. But the general trend,—of course you will find the general trend of the slope,—is it not to the north and to the east?

A. More to the north and east.

Q. And most of all northeast; is that true?

A No, I wouldn't want to say the most to the north.

Q. How was the snow upon the range, the forest reserve in the vicinity of Mr. Light's ranch on the 7th day of May, 1907; was there much snow upon the forest reserve?

A. What date was that?

Q. On the 7th of May.

A. There was considerable snow in the high altitude?

Q. Is the forest reserve mostly confined to high altitude?
199 A. As a general thing seven thousand feet and above.

(Photograph marked "Exhibit F. Defendant's Proofs.")

Q. Mr. French, I hand you a photograph, Exhibit F. Do you recognize the general country there from that photograph?

A. Yes sir.

Q. That is apparently a portion of the Holy Cross forest reserve in the vicinity of the Light ranch, southwest thereof?

A. Yes.

Q. Mr. French, do you happen to know where the northeast corner of the forest reserve is? Could you locate it on that photograph or not?

A. No, it could not be located because the picture does not show the land where it is situated, does not show the country where it is situated.

Q. You could not tell?

A. No sir, it is further to the right than what the picture shows.

Q. I mean on the 7th and 8th of May 1908 you were there at that time, were you not?

A. I can tell by referring to my notes,—give the exact date.

Q. On the 6th and 7th of May 1908 what portion of the Holy Cross reserve southwest of Mr. Light's ranch was covered with snow,—or can you tell?

A. No, I couldn't tell; there was considerable snow on the high range.

Q. At that time, Mr. French, was the grass upon the forest reserve in any special abundance; was there grass on the forest reserve at that time fit for cattle?

A. I didn't go on the forest reserve at that time.

200 Q. From your experience of that country when does the grass begin to grow so as to be fit for the use of cattle on the forest reserve southwest of Mr. Light?

A. Ordinarily about the 1st of June,—from the 1st to the 10th of June.

Q. And how long may cattle ordinarily remain upon the forest reserve in that locality in the Fall; how long do they remain, or when do they begin to come out?

A. Well, they will begin to drift down probably the first of October; maybe some few earlier than that,—the latter part of September.

Q. If a ranchman should drive a bunch of cattle upon the forest reserve in the vicinity of Mr. Light's ranch upon the 1st of May in the ordinary year, in your opinion would the cattle stay there?

A. Some of them would.

Q. Would you think there would be enough grass to keep them in good condition at that time on the forest reserve in that locality?

A. That would be too early.

Q. That would be too early. Do you have any difficulty, Mr. French, in keeping the cattle up on the high slopes of the mountain sides down there in that reserve?

A. Do we have any difficulty?

Q. Yes, in keeping them up towards the timber line?

A. Not when the cows are properly salted.

Q. But you have had difficulty, haven't you, in keeping
201 them up there in the last two years?

A. No sir.

Q. How do you account for the fact that the lower range of the Holy Cross reserve this past year has been so badly over-grazed?

A. How do I account for that fact?

Q. How do you account for that fact, yes.

A. Because there has been more stock in that particular portion than should be; they haven't been properly distributed.

Q. Isn't it a fact that the cattle will themselves voluntarily return from the high hills to the lower ranges during the months of June and July?

A. From the high hills to the lower range?

Q. Yes, that is, from up near timber line down to the lower portion of the Holy Cross reserve; won't they go down there voluntarily themselves; have you had any such experience with the cattle on that portion of the range?

A. Yes sir I have.

Q. And is that your experience?

A. I am answering that question when you asked if I have had any experience.

Q. But what is the result of your experience in reference to their coming down, or not coming down?

A. A short time during the month of July it is a little harder to handle the cattle,—keep them on the higher range, on account of flies.

Q. And there is a tendency for them to drift down during that month at least?

A. If they are not looked after carefully and properly salted.

202 Q. And you didn't want it to be understood that the over-grazing of the lower ridges of the Holy Cross range were due to Mr. Light's cattle, did you?

A. In a measure, yes.

Q. About how large measure, a measure of thirteen head?

A. On account of the fact, as I stated, that Mr. Light was not grazing his cattle under permit it was much more difficult to require those that had a permit to salt their cattle and look after them.

Q. But you have this year, 1908, required them to follow your directions in regard to salting, have you not?

A. As far as we could.

Q. With whom have you failed; who has refused to obey the rules and regulations of the Forestry Department this summer besides Mr. Light?

A. One stock man refused to put his salt on the forest,—put it below the line.

Q. What was his name?

A. Mr. Frank L. Shippie.

Q. Where does he live, Mr. French?

A. He lives at Emma, Colorado.

Q. How many miles northwest from Mr. Light.

A. Between four and five miles, I should say: I could not give the exact distance.

Q. And how far from the portion of the forest reserve where his cattle were grazing?

A. How?

Q. How far did he live from where his cattle were grazing on the forest reserve?

A. Possibly three miles.

Q. Did he say that Mr. Light was the reason he didn't *sale* his cattle?

A. I didn't talk with him myself about it.

203 Q. Do you wish it to be understood by the judge when he reads this testimony that the short-coming of Mr. Shippie in regard to the salt was due to Mr. Light?

A. It was much harder to require other permittees to comply with the regulations when other parties were defying the regulations and allowing their stock to run on the forest.

Q. Please answer the question.

Mr. KNAEBEL: I object to the question as wholly improper; it is not competent to ask the witness what he wishes the court to understand; you ask him to testify to the truth,—the court will understand it.

Q. (Question read by the stenographer). Can you answer that yes or no?

A. I think I have answered the question sufficiently.

Q. You don't care to answer it any other way than what you have already answered it?

A. No sir.

Q. Mr. French, do you think it would be possible for you to give us an approximate statement of where the lines of the forest reserve are in reference to the lower limit of snow in this photograph Exhibit T?

A. Approximately, did you say?

Q. Yes, approximately, the limits of the forest reservation in reference to the snow line, the lower snow line? Is it near the snow line, or a considerable distance away from the snow line?

A. Quite a little distance; I can point on the map the approximate location.

204 Q. Is it not a fact that that photograph shows that almost the entire forest reserve was at that time covered with snow?

A. It does not.

Q. It does not?

A. No sir.

Q. Well, if you think you can, mark approximately the location of the east line of the reserve in township 9 south range 87?

A. (Witness marked as requested with a dotted line in pencil) It shows this to be very flat through here, and this is quite an uneven ridge.

Q. Mr. French, can you approximately locate the corner of the reserve that would be the southwest corner of township 9, range 86?

A. It is on a ridge, on the eastern slope of the ridge south of the McCartney ranch.

Q. It is difficult to show it on this map?

A. It is very difficult to locate it on this map because the picture shows the country as being comparatively level. It is very hard to show it there. That line that I attempted to mark on the picture is running north and south.

Q. And the approximate location as nearly as you could make it from the photograph?

A. As near as I could tell from the photograph.

Q. You spoke, Mr. French, of being familiar with the number of cattle that are by the regulations permitted to graze upon this special district of the Holy Cross reserve. How many were permitted to graze during the season of 1908?

A. Please state that question again.

205 Q. What was the allotment of cattle for the year 1908 upon this particular district of the Holy Cross reserve?

A. The number allotted was for the entire forest, and then the divisions are made, so many allotted to each district; that is, it is divided in districts.

Q. How many for this district, Mr. French?

A. Which have been permitted for this district?

Q. Yes, this year.

A. I could not state the exact number.

Q. Approximately?

A. Approximately somewhere between eight hundred and a thousand head.

Q. Can you give from the maps an idea of the extent of this grazing district?

A. Approximately three townships; that is for the entire district.

Q. The allotment fixing the maximum number of cattle upon this grazing district covered what number during 1908,—covered what number of cattle?

A. I could not give the exact number; I could give it by looking at the records.

Q. Just approximately, Mr. French, will do.

A. I think something like twelve hundred head.

Q. And how many cattle, if you know, were actually permitted to graze thereon under permit?

A. Approximately that number, or somewhere near that number.

206 Q. Mr. French, is it injurious for cattle to graze upon the forest reserve,—injurious to the reservation?

A. It depends how they graze on it. In what way do you mean injurious?

Q. Injurious to the forest's growth?

A. In some particular localities it is.

Q. It is mostly injurious to the grass, isn't it?

A. Yes sir, and if the grass is over-grazed it might be injurious to the reproduction of the young growth of timber.

Q. Is there any timber growing on the lower stretches of the Holy

Cross reserve in the vicinity of Mr. Light's ranch to the southwest?

A. There are some Aspen.

Q. How far do you have to go into the forest reserve from the easterly edge before you begin to strike real timber?

A. On what portion?

Q. Southwest of Mr. Light's ranch?

A. We find timber immediately inside of the boundary line in one place.

Q. That is Aspen?

A. No sir.

Q. Do you find some spruce and pine?

A. Find spruce.

Q. And near what section would that be if there had been a survey made?

A. It would be in section 23, town 9, range 87.

Q. Now on what would be section 2 and section 11 is there any timber?

A. On section 2?

Q. Section- 2 and 11?

A. In what township?

Q. Township 9, south range 87 in the forest reserve?

A. Yes sir.

207 Q. What character of timber?

A. Spruce and pine.

Q. Is it anywhere near the easterly boundary line of those sections?

A. In speaking of timber do you mean timber in considerable quantity or few trees?

Q. In some considerable quantity, not scattered trees, but in some considerable quantity?

A. It would possibly be a mile from the east boundary, approximately.

Q. Mr. French, if Mr. Light had paid his permit this spring for himself and son do you think the condition of the forest range would have been any different from what it is now?

A. The condition of the range?

Q. Yes, of the range; forest range upon the forest reserve would be any different from what it is now?

A. I think the cattle—I am sure they would have been in better condition if they had been properly handled.

Q. Was Mr. Light the only one who refused to properly handle his cattle on the forest reserve?

A. Mr. Light was the only one that refused to make application for permit on that district.

Q. But that does not answer my question. Please answer it.

A. Maybe I misunderstand you.

Q. (Question read by the stenographer.)

A. As I stated before, Mr. Shippie refused to put salt up on the higher range.

Q. Anyone else besides Mr. Shippie?

A. Not that I recall.

Q. Have any of the ranchmen or cattle owners in the
208 vicinity of Mr. Light refused to take out grazing permits on the Holy Cross reserve in the year 1908?

A. I have had considerable trouble with some.

Q. Have any of them refused besides Mr. Light, within eight or ten miles of Mr. Light, on either side?

A. Yes.

Q. Who?

A. Mr. Harris refused.

Q. Has he taken out his permit?

A. No sir.

Q. Has he run any cattle?

A. Does he run any cattle?

Q. Yes sir.

A. Yes sir.

Q. Are any of them on the forest reserve?

A. Yes sir.

Q. Where does Mr. Harris live?

A. He lives near El Jebel on the Midland.

Q. How far is that from Mr. Light's place?

A. I could not state the exact distance; it was ten or twelve miles, possibly twenty.

Q. Do you remember or recall anyone else who has refused to take out a permit?

A. Some others have declined, but have lately, that is, afterwards, made application.

Q. You think that grazing upon a forest does not, as a rule, damage a tree except where the grazing has been very excessive?

A. No, it is only where grazing is excessive.

Q. Now is there more grass up amongst the trees on the Holy Cross reserve, or is it on the lower slopes where there are few, or no trees?

209 A. On the more open ridges, on the higher ridges.

Q. Are the open ridges all below the thick growth of trees in altitude?

A. Not necessarily.

Q. Well, where is the best grass on the Holy Cross reserve in this vicinity, lower down or higher up?

A. At a higher altitude.

Q. And during what portion of the year may cattle stay up there and graze profitably?

A. From June until the latter part of October.

Q. Does the grass grow under the trees?

A. No, grass does not grow under the trees.

Q. So there is very little eating of grass by cattle in the thick forests of the forest reservation?

A. There are open parks in the timber, and in those parks the feed is very good, as a general thing.

Q. And the cattle eat in the open parks?

A. Yes sir.

Q. And so that don't hurt the trees very much?
A. They run through the timber a great deal.
Q. Do you know how many cattle were allotted by the entire Holy Cross in 1908, approximately?
A. I think fifteen thousand head.
Q. Do you know approximately how many cattle — have been given permits upon the Holy Cross reserve the past year?
A. I could not state without referring to the records.
Q. Was it anywhere near the limit do you think?
A. I think not.
Q. If Mr. Light had paid his permit, would that have over-crowded the forest range in this vicinity?
A. You are speaking of 1908?
210 Q. 1908, yes.
A. Not necessarily.

Mr. WARD: Mr. French, if convenient, I wish you would get those figures for me as to this district adjacent to Mr. Light, and also as to the entire Holy Cross reservation, if possible.

Q. You spoke, Mr. French, about a meeting at Basalt where Mr. Light persuaded his fellow cattle men not to take out permits, and a paper was signed something to that effect. Have they kept their promise those men?
A. No sir, not all of them.
Q. Did you have any idea why they didn't keep their promise?
A. That would be pretty hard for me to state.
Q. As far as you know from your own actions, and the actions of your subordinates, were any threats made of suit or arrest of those men during the past year?
A. No sir, not as far as I know.

Whereupon, the hearing was adjourned until Saturday the 26th day of September, A. D. 1908, at the hour of nine o'clock A. M.

Pursuant to the foregoing adjournment the parties appeared by their respective solicitors on Saturday the 26th day of September, A. D. 1908, at the hour of nine o'clock A. M., the complainant appearing by Ernest Knaebel, Esq., and the defendant appearing by Ethelbert Ward, Esq., whereupon the following proceedings were had:

Cross-examination of HARRY H. FRENCH resumed.

By Mr. WARD:

Q. Mr. French, please explain why it is considered neces-
211 sary be your Department that salt should be placed upon the reserve?
A. In order to hold the cattle on the higher range.
Q. And it has been your experience that if salt is not placed upon the higher range they will come back to the lower range and over-graze that?
A. Over-graze it, yes, and the season of course is shorter somewhat

in a higher range and you want to take advantage of that, and of the better feed.

Q. And to keep them up there as long as they will?

A. Yes sir.

Q. Mr. French, in reference to the conversation you had with Mr. Light shortly before the Denver Public Lands Convention of last year, where you notified him to remove his cattle from the range. I believe that the testimony was that you did notify him at that time, and there was a specified time in that notice within which he should take his cattle off. Was that three days, or six days' time?

A. Six days' time, as I recollect it.

Q. And it was after a conversation with Mr. Light that the time was changed, wasn't it?

A. Yes, sir, he was given ten days' time; he said that he had to attend a Convention, and he was late with his crops, and with irrigating and the like of that, and it would be impossible, or practically impossible for him to comply with that request in such a short time.

Q. Did he also say that he hoped to arrange with Mr. Pincho for a test case upon the question of grazing?

A. I don't recall that any test case was mentioned.

212 Q. Do you recall any conversation to the effect that he hoped to arrange with Mr. Pincho while here to settle this question of the grazing?

A. Yes, there was something of that sort said; I could not state the exact words.

Mr. WARD: That is all, Mr. French.

Redirect examination.

By Mr. KNAEBEL:

Q. As I understand it, Mr. French, the idea of requiring salting upon the higher portions of the forest range is to utilize the good feed up there to the maximum, reserving the good feed on the lower forest range for later in the season when the higher range is not available because of snow?

A. Yes, sir, that is the object.

Q. And what, if any, effect has the refusal of Mr. Light to submit to the regulations, and his attitude in regard to leaving his cattle on the reserve without permit had upon your ability to induce or persuade those who have taken out permits to use the range in such a way as to equalize the grazing?

A. Well, I didn't feel in position to require as much from those who had permitted stock for this reason, that unpermitted stock were running on the forest,—grazing on the forest.

Q. And those stock would do what if you should require the permittees to range their cattle high, the trespassing stock would do what?

A. They would graze lower; and they didn't feel that that
213 would be treating them fair to compel them to put their stock up on the higher range, and others could leave theirs lower down, or save the range for late feed.

Q. One question about the likelihood of cattle getting over into the Roaring Fork or Capital Creek valleys when turned out from the northeast of Mr. Light's ranch. How about that?

A. The cattle would drift the other way; there is no open range to the east from Capital Creek on account of the land being nearly all fenced, patented land.

Q. And is there also a divide there?

A. There is a very high divide between Mr. Light's place and the Roaring Fork, very steep to the east and north.

Q. Is it passable by cattle?

A. Well, it is not practical for them to work over in that country, it is too steep.

Q. You might possibly drive them over but they would not go voluntarily; is that what you mean?

A. No, not voluntarialy.

Recross-examination.

By Mr. WARD:

Q. Is Exhibit G. the form of the grazing permit now used by your Department, and used in the Spring of 1908?

A. Yes sir.

GIDEON COOKMAN, a witness called on behalf of the complainant, being duly sworn, testified as follows:

214 Direct examination.

By Mr. KNAEBEL:

Q. How old are you, Mr. Cookman?

A. Well, sir, I was born in 1860.

Q. Where do you live?

A. I live at Snowmass, post-office address, and Capital Creek; I live on Capital Creek.

Q. Have you a ranch up there?

A. Yes sir.

Q. How near to Mr. Light's place?

A. Well, sir, I join Mr. Light on the east,—or west of my place.

Q. And what business do you conduct on your ranch?

A. Oh, I cure some hay and raise a few cattle.

Q. How many cattle have you?

A. Oh I have got about fifty I guess, somewhere along there.

Q. How long have you known Mr. Light?

A. I have known Mr. Light for twenty years, I guess.

Q. Did you used to work for Mr. Light?

A. I did.

Q. For how many years?

A. I worked for him off and on for three years, I believe.

Q. On the ranch where he now is?

A. Yes sir.

Q. How long have you lived in that vicinity there,—the Roaring Fork Valley?

A. Well, sir, I have lived there since 1887.

Q. Have you had much familiarity with the business of raising cattle,

A. Oh, a little.

Q. For how many years?

A. Ever since I have been in the country, since 1887.

215 Q. Do you know what the custom of all the neighbors there has been, about the time of turning out their stock?

A. Yes sir.

Q. And where the stock have grazed each year?

A. Yes sir.

Q. What has that custom been; what have they done each year in regard to turning out their stock?

A. Well, when Spring comes along from the middle of April to the first of May along, why we turn out.

Q. Where do you turn out?

A. Well, we turn out up Capital Creek and on Sopris Creek.

Q. On the vacant public land?

A. Yes sir.

Q. And you may state if you will what cattle do each year after you turn them out?

A. Well, sir, we turn them out—sometimes we turn them up Capital Creek and they come back down, and then we will fire them over on Sopris Creek, and probably then they will work back, around back on to the range up high.

Q. Please look at this map Exhibit 1. Now you see where the forest is marked on that map in the southwest corner, the green line?

A. Yes here is the Sopris Creek.

Q. Do you see where Mr. Light's ranch is marked?

A. Yes,—yes I see here what you mean,—you have got that marked.

Q. Now state what the habits of cattle are each year when turned loose from the ranches around Mr. Light's there; where do they go finally?

A. Why they will go—some of them will go down Sopris

216 Creek, and some will go around up Sopris Creek, and they will scatter all over the country there.

Q. And where do they get their summer feed?

A. Why they generally get their summer feed up on the reserve.

Q. Well, what proportion of the cattle remain down on the lower range on vacant public land?

A. Oh well there is at times probably you will see a big bunch of cattle maybe this week, and the next week, say, you won't see any at all.

Q. What will become of them?

A. Well, they drift up on the range you know, get higher up in the mountains.

Q. Now referring to that vacant public land that lies north and northeast and northwest of Mr. Light's place there—do you know that range?

A. Yes sir.

Q. Will you state how many persons use that range for their cattle in the spring?

A. Well there is of course the cattle that is turned out in the Emma country, there is a good many of them work up that way, and Mr. White turned some cattle in there, and I turned some in there last Spring below Mr. Light's ranch right there; let them go below his place.

Q. So that Mr. Light does not have the sole use of that range?

A. Oh no, no, he don't have the sole use of it.

Q. For how long a time in the spring is that range good?

A. Well it is—of course it is a great deal owing to how many cattle there is on it; there are times when there may be two
217 hundred or two hundred and fifty head of cattle in there for a few days; they will soon drift out down Sopris and up Sopris Creek, you know. Of course the feed gets short in the Spring.

Q. Now take two hundred cattle,—how long would that range that I have spoken of support two hundred cattle in the spring?

A. Well, take it south and west of Mr. Light's?

Q. No, not south and west, but north?

A. Yes, and north, well, two hundred head of cattle north of Mr. Light's wouldn't stay there over probably thirty days at the outside, I should judge.

Q. What is the reason?

A. Well, they drift out and go to better feed, you know; they would make the feed very short inside of thirty days, I think; that is north of Mr. Light's between there and the Roaring Fork.

Q. Now can you just state where they would go to from the habits, and the ground and feed?

A. They would mostly drift up Sopris Creek from there.

Q. Well, they could not follow the stream exactly, could they?

A. Oh No; they would follow the range up, probably go down Sopris maybe half a mile, and then drift up and go into Hay Park country and on to the reserve and in there.

Q. Are there any cattle trails that pass anywhere near to Mr. Light's place?

A. Yes sir.

Q. State where they are?

A. Well, there is cattle trails come around above Mr.
218 Light's ranch, and above Findley's, and on to the Creek in the Sopris country,—Hay Park and all through there.

Q. And where do those trails end,—lead to?

A. Well they just—they will probably—you will strike a big trail here, and also up in here and here, and then they will scatter,—they will scatter out cattle naturally scatter, you know.

Q. You say "up in here," what do you mean?

A. I mean up above Findley's and Dougherty's—that country.

Q. With reference to the forest reserve, where?

A. Into the forest from Mr. Light's into the forest going south.

Q. When you spoke of going up Sopris Creek do you mean in the direction of the compass?

A. Well, that is southwest.

Q. Up the stream?

A. Yes sir.

Q. Now down Sopris Creek is there any grazing to amount to anything?

A. Well, yes sir, there is some grazing down Sopris Creek too.

Q. To what extent can you graze cattle down there, and for how long?

A. Oh, well, the cattle don't stay on Sopris Creek very long down there, they generally go up and drift up, you know.

Q. What is the reason they don't stay down there?

A. Well, I suppose probably the feed may get short and they naturally drift up, the cattle.

Q. Well, now, that grass that grows on the open range around Mr. Light's, and in Sopris Creek north of his place, all in that open public land there has been called "blue-stem." Why? Is that what it is mainly?

219

A. Yes sir, it is mainly, I believe, blue-stem through there.

Q. Is it very thick on that range?

A. No it is thin.

A. And what kind of grazing is there on that range after the hot weather comes on, dry weather?

A. Well, it is generally pretty poor.

Q. And what is the condition of that range each year after the cattle that are usually turned upon it by the neighbors there have been upon it, at the time when the hot weather comes on?

A. Well, it is generally very poor on the range at that time.

Q. How about the water?

A. There is plenty of water in Sopris Creek.

Q. Is that the only place where they get water?

A. Well, what stock stays on that place north of Mr. Light's on that ridge, then generally they water at Sopris or Capital Creek.

Q. Now how many cattle stay on that range throughout the summer?

A. Oh, well, there isn't very many cattle stays there generally through the summer on that range.

Q. Approximately, how many would you say?

A. Well, probably maybe twenty-five or thirty.

Q. Is there any ground upon which you can account for the fact that twenty-five or thirty cattle would stay there while the rest would all go up on to the forest; is there any difference in the cattle, or how is it?

220

A. No, I don't think there would be much difference in the cattle in that small bunch that stay in there. I don't think there would be very little difference in the cattle, if any.

Mr. WARD: We object to the question and answer for the reason that it is assuming in the question that the balance of the cattle go on the forest reserve.

Q. Where do the balance of the cattle go?

A. Well, they probably some go on the reserve, and some are below the reserve.

Q. You say "probably," Mr. Cookman.

A. They are in different places, the cattle would be, of course. We used to generally drive them up high, you know, but they haven't been driven up for a year or two; I don't think they have been driven out of that country in there for three years. I believe the first summer of the forest reserve the cattle was driven out, and up on the high range, but they haven't been since.

Q. You mean up very high?

A. Yes sir.

Q. Referring to the regions that Mr. French testified to a moment ago where he said that he wanted to have them salt up there?

A. Yes, they were put up high in 1906.

Q. You know about where the forest line is on the east, or just west of Mr. Light's place?

A. Why I know about where it is in one place.

Q. Well, if it runs north and south, due north and south,
221 there, then you have an approximate idea of where it runs, have you?

A. Yes I have.

Q. On that map you see it is about a little over two miles to the west of Mr. Light's. Now I wish you would describe a little more fully any trail, if there is such, which passes near Mr. Light's place on its west side—cattle trail. Do you see one marked on the map?

A. Yes, I see here where there is, I guess, two different trails marked on the map here, or three.

Q. Will you state whether or not there are such trails on the ground there?

A. Yes sir, there are such trails on the ground there.

Q. Are they difficult to find, or are they well worn?

A. Well, they are well worn, especially I know the one is that goes around above Mr. Light's ranch there, and Mr. Finley's place.

Q. And is that the one that goes around the northwest corner of his place?

A. Yes sir.

Q. Just describe where that starts, as nearly as you can?

A. Well, it starts in below Mr. Light's ranch near Sopris Creek,—on the creek, and starts out up the hill around there.

Q. And does it just turn around the corner of his fence?

A. Well, it goes around the corner of his fence there, and there is a cliff above his fence west that they can go around and go up or down.

Q. Well, then, does it pass down near his place on the west?

A. On the west?

222 Q. Yes.

A. Yes, it goes around above his ranch on the west, goes around above the ranch and above Findley's ranch and goes out on the range.

Q. Now if you were to follow that trail going towards the southwest would there by any fences near to it?

A. There would be a fence along a little ways from the trail east of Mr. Light's fence and Findley's and Dougherty's ranch.

Q. That is, you would have fences on your left, would you?

A. Yes sir.

Q. And what would be on your right: would there be a hill?

A. Yes sir, there would be a hill.

Q. Now if you went along that trail how far would those fences continue?

A. Well they would continue for a mile and a half or two miles up Sopris Creek.

Q. And would the water be accessible to the cattle there?

A. Well yes, there is some water in between about half way across between, probably three-quarters of a mile further there is water in the gulch.

Q. Does that stay there all the year?

A. Well I think so,—it is to a certain extent.

Q. Is it sufficient for many cattle?

A. Well, I don't know how many cattle it would water there; probably it would water fifty or one hundred cattle maybe all through the summer.

Q. Now just tell us how that trail goes, through what kind
223 of country, before it passes from the forest line there?

A. Until it gets to the forest line?

Q. Yes sir.

A. Well it goes over the hill just of course into gulches and little open parks, you know, until it gets into the reserve, the trail does. Of course it is a hilly country, you know, it is a rough country through there, it is rocky,—some places are rocky and some are smooth.

Q. Is there anything about the country there which would tend to keep cattle on the trail?

A. Nothing whatever, they can either go on the trail or they can go off of the trail; they can go off out of the country either way; there are different trails there through that hill.

Q. The rising ground tends, as I understand it, up toward the forest?

A. Yes sir.

Q. Now what happens to the grazing as the weather gets warmer?

A. The cattle naturally work up as the snow goes off,—follow the snow up.

Q. And you will state again, if you please, why it is that they work up?

A. Well, I suppose it is better feed.

Q. Well, now, you know about that, do you?

A. I think so, yes sir.

Q. Is there much, if any, good feed left on the lower range as they work up?

A. Well, it is generally eaten off pretty close as they work up here the general thing the feed gets better on the lower ranges after the cattle have left the lower range—it generally gets
224 better through the summer.

Q. Do you know where Mr. Light has been accustomed to range his cattle,—taking 1906, 1907 and 1908?

A. Well, I have seen his cattle on the range there,—Sopris Creek and Capital Creek,—head of Sopris and Capital.

Q. Did you ever see any of his cattle on the forest?

A. Yes sir.

Q. During what years?

A. For the last ten or fifteen years, ever since I have been in that country and I have been on that range.

Q. You yourself have complied with the regulations in taking out a permit from the Government for that stock on that reserve, haven't you?

A. Yes sir.

Q. Did you see any of Mr. Light's cattle on the reserve this summer?

A. Yes sir.

Q. How did you come to go up there?

A. Oh, riding after horses is the only way.

Q. How many times did you see them?

A. I have seen them two or three times.

Q. And about how many cattle?

A. Oh, I don't know, probably—maybe I have seen fifteen or twenty of them on the range.

Q. You don't know whether you saw the same cattle each time, or not?

A. No sir, I don't.

Q. Did you see any of his horses up there?

A. Yes sir.

Q. You know his cattle and horses, do you?

A. Yes sir.

Q. About how many horses of his did you see up there?

A. Oh, well, I don't know, I didn't count them at all,
225 but I have seen several of his horses on the range.

Q. On the forest?

A. Yes sir.

Q. How about last year?

A. I see them last year.

Q. Same way. At different times?

A. Yes sir.

Q. If you know, state what Mr. Light's custom has been in regard to the place where he turns out his stock in the spring?

A. Well, sir, I think his custom,—as near as I know the cattle, whenever they want to go out can go right out on the range from Mr. Light's.

Q. Now please explain that; how could they get through the fence?

A. The fences in the country are generally down in the spring in the Capital.

Q. Mr. Light's?

A. Well, on all of the ranches, in fact, not Mr. Light's ranch any more than maybe anyone's.

Q. Do you mean by that, that he leaves his fences down?

A. Yes sir, our fences are generally down in the spring of the year.

Q. I want particularly to know about Mr. Light's fences, if you please?

A. Well, I have noticed Mr. Light's fences a good deal that way too.

Q. On each side of his ranch?

A. Well, on the northeast side of his ranch.

Q. Did you ever notice the southwest side?

A. No, I have not noticed the southwest side, for I never was over in there in the spring.—I couldn't say to that, but I
226 have noticed the gaps along on the northeast, why, that goes out on that hill there in the winter; why they are generally open all winter, cattle go out there and sleep under the trees, and it is a protection for the cattle.

Q. Do you know where Mr. Light has generally turned his cattle out, at what place.

A. No, I do not; of course he used to turn out—we used to turn our cattle, when I worked for Mr. Light we turned them up Sopris Creek out on the west,—southwest, they went out that way.

Q. Now if cattle go in that region on the vacant public lands there, which appears on that map to the north of the forest, what kind of a range do they find there? Not in the forest, but right north of it, and west of East Sopris Creek?

A. Well, they would find some very good range through there in the spring.

Q. And in the hot summer months, how about that?

A. Well, it is dry and barren, a good deal of the lower country.

Q. What do the cattle do that stray in there?

A. Well, they generally come out of there when the feed gets short and go on to the range, you know.

Q. When you say "the range" you mean the forest range?

A. Yes sir I do.

Q. Have you ever heard Mr. Light make any statement about whether or not he would take out a permit for his cattle?
227 A. Well, I have heard it, yes.

Q. When?

A. I heard it in the Association at Basalt one time.

Q. Did you ever hear it at any other time?

A. Not from Mr. Light I never did.

Q. Did you ever hear other people talk about it?

A. Yes sir I have.

Q. Is that a matter of common notoriety up there?

A. Yes sir, it was.

Q. And how about his persuading any one else, or in trying to persuade any one else not to take out a permit? Do you know anything of that?

A. No sir, nothing more than in the Association we were taking out no permits.

Q. What did he say up there?

A. Well, indeed I couldn't tell what he did say in the Association at all.

Q. Well, just the substance of it, not the exact words?

A. I know they had a petition in for to sign not to take out permits you know, and he was advocating that strong.

Q. Did he ever advise you not to take out a permit?

A. No sir, I don't think that he ever did.

Q. Did he ever come to you and say anything to you about the subject?

A. Well, I think we did have a talk about it once, but what Mr. Light said to me I could not state now for I don't remember exactly what he said to me about the permit; it was a very few words I know,

Q. Did he tell you that he intended to take out a permit?

228 A. No sir, he did not.

Q. What I am getting at, Mr. Cookman, is as to whether you have ever heard Mr. Light on other occasions at Basalt give out either to you individually or to others that he would not take out a permit?

A. I have.

Q. How frequently?

A. I never remember any but once, that was at Basalt at the Association,—Stockgrowers' Association.

Q. You never had any conversation with him on the subject, then?

A. No sir, never did.

Cross-examination.

By Mr. WARD:

Q. Mr. Cookman, the conversation that you have heard with Mr. Light in reference to taking out permits was based upon Mr. Light's contention that these permits were unlawful, was it not?

A. Yes sir.

Q. And in violation of his rights as a citizen?

A. Yes sir.

Q. And unreasonable?

A. Yes sir.

Q. And that he was not going to stand for it?

A. Yes sir, that was it.

Q. You know something about the regulations, and are a cattle man aren't you?

A. Yes sir.

Q. Do you think they are unreasonable?

Mr. KNAEBEL: That is objected to as manifestly incompetent.

229 Q. Answer the question?

A. Well, I think they probably are unreasonable.

Q. Why did you take out a permit?

A. Well, I was afraid I might get into trouble, to tell you the fact—I wasn't going to take no chances.

Q. Mr. Cookman, you have worked on that ranch, I understand, some twenty years?

A. Yes.

Q. And you helped Mr. Light handle his cattle?

A. Yes sir.

Q. Do I understand you to say that the custom of former years was for Mr. Light to drive his cattle away from the immediate vicinity of his ranch up East Sopris Creek?

A. Yes sir.

Q. Why was that done?

A. Well, we would generally put them up there for better feed, you know.

Q. Did the fact that feed was desirable near the ranch in the winter time have any effect?

A. Yes sir.

Q. Did you not have an object in preserving the feed immediately around the ranch?

A. Yes sir, I did.

Q. Why?

A. Well, it saved us feeding hay, you know, all the fall.

Q. In the winter time?

A. Yes sir.

Q. You say that even now Mr. Light's practice is to leave his pasture north of his house and northeast of his house open so that they can go in and out upon the range in the winter time?

A. Yes sir.

Q. And so there is feed even now in the winter time upon the range near his ranch?

230 A. There is lots of browsing in there in the winter.

Q. And you have *have* helped Mr. Light drive his cattle up East Sopris Creek into what is now the Forest Reserve?

A. Yes sir.

Q. Would the cattle stay there voluntarily, of their own accord?

A. Well, yes, they stay pretty well up there.

Q. Do you not remember of sometimes having to make two or three drivings in the year?

A. Yes sir.

Q. They would come back, then?

A. Come back sometimes.

Q. Why wouldn't the cattle stay up on that excellent grazing on the high reserve?

A. I guess they get kind of accustomed to hanging around the ranches there, and they would follow back,—they will do it yet.

Q. Just the habit of the creature?

A. Just a strange habit of the brute.

Q. And if you put a herd of cattle upon a field of timothy without a fence around it will they stay there?

A. Well, they are not likely to very long.

Q. Now you are quite familiar with that country over there that we have spoken of, as to the Roaring Fork country from Aspen to Glenwood Springs, are you not?

es sir.
there anything that would prevent cattle from straying and from Mr. Light's ranch in either direction for any distance?
A. No.
Q. How far could they graze and stray without damage o themselves in the direction of Aspen without getting on st reserve?

KNAEBEL: This is objected to unless it is to inquire whether at to know how far the ground is unobstructed, or how far nd affords a proper feed for the cattle.

ell, now, I don't know where the forest reserve line runs ve there at all.
d isn't it a fact that they could stray and graze profitably o Aspen?
s sir.
the valley,—almost to Aspen?
s sir.
it not true that they could stray and graze profitably to es and keep in good condition, clean down the valley to l Springs?
s sir, they can.
d to Carbondale?
s sir, to Carbondale.
d is it not true that a large portion of Mr. Light's cattle, as he cattle of other people in that neighborhood, do graze n the Crown country?
sir.
at is the Crown country, Mr. Cookman?
e Crown is a big country.
t lies between Sopris Creek proper, doesn't it, and Crystal
sir, it does.
ris Creek on the west,—Sopris Creek on the east and Crys- n the west and Roaring Fork on the north?
sir.
at fairly good grazing in that country?
A. Yes sir, I think so.
Q. Cattle in years past and now have grazed upon that ntry during the entire season, have they not?
sir.
ng the past years, say some ten years ago, how many ranged in that Roaring Fork Valley as compared to the more or less?
, I believe there were more cattle.
ose days. Do you remember of Price Schloss ever having nch of cattle in the Crown country, and on the range and north of Fred Light?
ir.
t how many do you know of his having had there, in r?

A. Well, I have known him to have as high as six or seven hundred different summers.

Q. Different summers?

A. Yes sir.

Q. Possibly he may have had as high as eleven hundred, do you recollect, one season?

A. No.

Q. Do you remember that R. H. Tucker ever ran any cattle there on that range at the time that Schloss was running cattle?

A. Yes sir, I do.

Q. How many do you remember of his having run there in various summers?

A. Well, all the way from five to seven hundred.

Q. And during those same seasons was Mr. Fred Light running any cattle upon this same range?

A. Yes sir, he was.

Q. How many would his cattle average in years past during the different seasons?

A. Well, they would average from two to five hundred.

233 Q. Do you remember of Mr. Zimmerman ever running any cattle on that same Crown range above Mr. Light's?

A. Well, yes, that is west of Mr. Light, you know,—West Sopris and through there.

Q. In the Crown country?

A. Yes sir.

Q. How many cattle would he ordinarily run there on that same range?

A. Well, indeed now I could not say about how many, Mr. Ward.

Q. He had a bunch of cattle there?

A. Yes sir; I don't know how many cattle Zimmerman run in there, but I remember Zimmerman run cattle in there all right.

Q. Do you remember Mr. Chatfield running cattle in there during the same period?

A. Yes sir, I do.

Q. How many would Chatfield run there?

A. Well, sir, Chatfield, I believe he had probably from six to eight hundred head,—somewhere along there.

Q. And some seasons probably more, wouldn't he?

A. Yes, would have maybe more, I don't remember just how many Chatfield did put in there first, it may have been a thousand head Chatfield put in there, but I couldn't say to be positive about the number of head.

Q. Now during the year 1908 were there as many cattle on this same range as there were in the time you have just been mentioning, when Chatfield and Schloss ran these large bunches?

A. No, there is not.

Q. Does Schloss run,—did he run any cattle on that range

234 in 1908, this year?

A. I don't think so, I never heard of any.

Q. Do you know whether Chatfield ran any cattle on this same range this year?

A. No sir.
Q. And how about Tucker?
A. Not any.
Q. How about 1907 on Schloss running cattle there?
A. Don't think Schloss had any there in 1907.
Q. And Chatfield in 1907?
A. No sir.
Q. Tucker?
A. Tucker I believe had some cattle in there in 1907.
Q. How many cattle, Mr. Cookman, if you know, were grazed this summer on the range we have just been speaking of, and the forest reserve immediately south and southwest of this range?
A. Well I could not say.
Q. You could not say?
A. No sir, I could not.
Q. Were there as many cattle, in your opinion, grazed this summer as there used to be in the district when Schloss and Tucker and others ran their bunches?
A. I don't think there is.
Q. Were the cattle that were handled by Schloss and Tucker and Chatfield good, marketable cattle when the fall came on?
A. Yes sir.
Q. Did they get fat?
A. Yes sir.
Q. Did many of them starve to death for want of water along that range?
A. No sir.
Q. Did they starve to death for want of grass?
A. No sir.
Q. They of course would drift around in all directions?
A. Yes sir.
235 Q. I understood you to say, Mr. Cookman, that it is the habit of Mr. Light, and possibly others, I think yourself——
A. Yes sir.
Q. (Continuing:) —in the early spring to turn your cattle out to the north and northwest of Mr. Light's ranch?
A. Yes, on that side.
Q. Why do you do that, Mr. Cookman?
A. Well it is early feed, you know, it is about the first of it we have in the country.
Q. And why is it the grass comes earlier there?
A. Well, the snow don't lay on the hills so late.
Q. And what is the exposure of that ground, how does it slope; has it a northerly exposure or southerly exposure?
A. Southerly.
Q. And you say the grass comes out there earlier than other portions of the range?
A. Yes sir.
Q. And of course the grass is eaten there first because the cattle are about there first?
A. Certainly.

Q. I understood you to say that later in the summer feed gets better there?

A. Yes sir, generally gets better there in the summer.

Q. So that what is the condition there this year now at this time as to the feed compared with the early spring; I mean compared with, say, about the latter part of May?

A. Indeed I haven't been on that hill this summer, I couldn't say.

Q. Is that range in approximately the same condition as it was six to eight years ago, as far as grass is concerned?

A. I don't think it is quite as good, probably.

Q. Is there any very marked difference; is it hurt very
236 much; is it much poorer than it used to be?

A. I don't think it is very much poorer.

Q. Just as much water there as there used to be?

A. Yes sir, the water is there.

Q. There don't as many cattle stay there as they used to, do they?

A. No I don't think they do.

Q. What is the reason for that, Mr. Cookman?

A. Well, I could not say, probably they are cattle that has been raised and kept there, and they naturally go up higher in the summer.

Q. Would you attribute it to the fact that there is every effort being made on the part of the Forestry Service to get people to pay for, and keep their cattle on the Forest Reserve?

Mr. KNAEBEL: I object to that as incompetent, and does not tend to assist any issue in this case whatever.

Q. Well, I know we pay for cattle, but that is up to us whether we keep them on the forest reserve or not.

Q. Do the forest rangers assist you in keeping them there to any extent?

A. They do.

Q. Do they put salt up on the range?

A. No.

Q. They make you put salt there, do they?

A. Yes sir.

Q. Where do they make you put the salt, high up or low down?

A. High up.

Q. Why, Mr. Cookman?

A. Well that is to keep the cattle up there.

237 Q. Wouldn't they stay up here if it wasn't for the salt?

A. Well not so well, I don't think.

Q. So there is an effort being made by the forest rangers to keep the cattle, if possible upon the forest reserve?

A. Yes sir.

Q. And do you think that is one reason why there are not so many cattle down on the lower ranges now?

Mr. KNAEBEL: I object to that question as incompetent.

A. Yes sir, I think it is.

Q. Cattle can't stay in two places at one time?

A. No, cattle can't stay in two places at one time.

Q. I suppose they come very near doing it, though?
A. Yes, they do, I guess.
Q. Mr. Cookman, you said something about ranger Cyphers driving some cattle up into the reserve,—cattle which had permits?
A. Yes sir.
Q. When was that done?
A. That was in 1906.
Q. Do you know of any of the forest rangers assisting in driving other cattle with permit upon the reserve since then?
A. Yes sir.
Q. Of this year?
A. Yes sir, some this year.
Q. In any large bunches?
A. Well, probably from fifty to sixty head, or something of that kind.
Q. Would it be possible in driving through that country covered with scrub oak and aspen that Mr. Light's cattle might have
238 been driven along with some of those bunches?
A. Those what the forester drove this year was on Capital Creek,—gathered them all along the road and drove them up on to the range, cattle that had come back from the range on to Capital Creek.
Q. So they had left the forest range and come back?
A. Come back home.
Q. Now do you think it is possible, Mr. Cookman, that some of Mr. Light's cattle might have been driven along with that bunch?
Mr. KNAEBEL: I move to have the question stricken out as utterly unwarranted.
A. I couldn't say, I don't know.
Q. Mr. Cookman you have said, I think, there is plenty of water upon this range north, and northwest, and further to the northwest of Mr. Light's?
A. Yes sir. Water all through there.
Q. Is the water so distant on that range, so far away from the middle of the ranges as to be harmful to cattle for them to go to water?
A. I don't think so.
Q. Will it hurt a cow to travel two or three miles for water,—drift and graze two or three miles from water?
A. I don't think it would.
Q. Is East Sopris Creek inaccessible for cattle northwest of Mr. Light's ranch?
A. No sir.
Q. They can get water at almost any point without difficulty, can they not?
A. Yes sir.
239 Q. Now, Mr. Cookman, as a matter of fact all through that sagebrush country and all through the entire western country there are trails leading in almost every direction, aren't there?
A. Yes sir.

Q. Many of them what they call blind trails?
A. Yes sir.
Q. You will follow them a hundred yards and then they will just disappear?
A. Yes sir, a great many of them, too.
Q. And these blind trails, and trails are found practically in all portions of the range?
A. Yes sir.
Q. The trails of course are more distinctly marked close to the creeks?
A. Yes sir.
Q. How do you think it happens that they are more distinctly marked there?
A. Cattle going in to water.
Q. What is the habit of cattle when they go to water, follow trails or scatter along?
A. They follow the trails going to water.
Q. Will there be a string of cattle one behind the other?
A. Yes sir.
Q. And when they get through watering how do they go back?
A. Ordinarily graze back.
Q. Scatter out?
A. Yes sir.
Q. So that trails that have not been formed by buffalo and deer but have been formed by cattle, in your opinion, are mostly formed by cattle coming in to water rather than going out from water?
A. Yes sir.
240 Q. Of course when the fence has stood for a number of years in any portion of the range there is always more or less of a trail along that fence?
A. Yes sir.
Q. And I suppose you have noticed that there are some trails or tracks along the fence beginning from Mr. Light's north fence, running along clean as far as the fences go?
A. Yes sir.
Q. And there will be necessarily more or less blind trails and other trails that branch out?
A. Yes sir.
Q. And those trails were there how long ago,—twenty or thirty years ago?
A. Yes sir, been there for years.
Q. And some of them were formed before cattle ever came to that country,—you couldn't say that?
A. I wasn't in here before that.
Q. Mr. Cookman, you spoke of one especial trail as being pretty well defined and well worn leading in the general direction of the forest reserve. Where was that trail that you had reference to?
A. Where was it?
Q. Yes, where is that trail, rather?
A. It runs south from Light's and Findley's ranch in there, that

hill there is a good trail all the way through there—always has been for years.

Q. How does it run with reference to the fences or ranches up East Sopris Creek?

A. Well, it probably runs in places from three to eight hundred yards above the fences, you know, maybe a quarter of a mile,
241 or a half in some places you will find the trail.

Q. And how far, Mr. Cookman, is that trail a well defined trail before it begins to branch out?

A. Well, of course it branches out, begins to branch out even from the start, but there are pretty well defined trails, in fact, clear through to the top of the hill either way you want to go you will find trails.

Q. To the top of the first hill?

A. You can run clear through to the reserve on the trail south from that country in there from Sopris Creek.

Q. And you can branch off from that trail and run again on single trails?

A. Yes sir, you can go anywhere in that country there mostly on a trial.

Q. So that the trails spread out like the fingers on a man's hand in two directions?

A. Yes, sir, a good deal so.

Q. Mr. Cookman, did you notice any especially well defined trail leading into the direction that is marked upon this top trail here on the map?

A. Yes, I guess that trail is all right there too.

Q. And probably a dozen more trails there?

A. There are, there is two or three more in there.

Q. And running to the direction of the northwest?

A. Well, I don't know just which direction they run particularly, but there are trails through there, plenty of them.

242 Q. All through the sage-brush, oak and aspen?

A. Trails running in all directions, yes sir.

Q. Mr. Cookman, is there not a good wagon road running down East Sopris Creek through this range north and northeast of Mr. Light's ranch,—north and northwest of Mr. Light's ranch?

A. From the Hay Park?

Q. No, going down to Emma?

A. Oh yes.

Q. There is a good wagon road there, isn't there?

A. Yes sir.

Q. And when cattle begin to wander and stray from the territory immediately north of Mr. Light's ranch, would the fact that the road is there have any tendency to make them go down Sopris Creek?

A. They travel the road least in the Spring up and down.

Q. Would there be more of a tendency to follow the road than to follow these blind trails?

A. Well, I don't think there would.

Q. If they were grazing of course they would be liable to go in any direction?

A. Yes sir.

Q. But if they were leaving that range on account of hunger, and were going away from there somewhere else, would they have a tendency to follow that road?

A. They might follow that road quicker than anything else, I don't know which way they might stray out from there.

Q. As a matter of fact, Mr. Cookman, Mr. Light's cattle do range, and have in years past ranged over that Crown country, haven't they?

A. Yes sir.

243 Q. And it is possible for them to go even further west than the Crown country?

A. Yes sir.

Q. How far is the center of the Crown country from Mr. Light's ranch, would you estimate?

A. About nine miles I believe, as nearly as I can count.

Q. Where is Hay Park?

A. Hay Park is southwest, I believe, a little of Light's.

Q. Does East Sopris Creek run through Hay Park?

A. East Sopris?

Q. Yes, is that the head-quarters, East Sopris?

A. No sir.

Q. Does East Sopris run south or north of the Hay Park?

A. Runs north.

Q. So Hay Park is——

A. Oh it is east of the creek—of Hay Park, Sopris Creek is east of the Hay Park.

Q. You wouldn't know what section?

A. No, I wouldn't know what section.

Q. What is the principal feed on the lower ranges that we have been speaking of?

A. Why this blue grass and——

Q. Do you mean blue-stem?

A. Yes, sir, blue-stem. When I say "blue-grass",—it is principally I think blue-stem through that country; there is quite a bit of green grass in the oak you know, I don't know what you call it that *grown* in there,—good feed you know in the Spring early or late in the Fall,—cattle don't eat as much through the summer; I don't know what kind of grass they do call it.

Q. Do you recall bunch grass above the beaver dam on

244 East Sopris Creek about a mile below Mr. Light's ranch?

A. Bunch grass?

Q. Yes.

A. Yes, there is a little bunch grass through there, yes, on them hillsides.

Q. And this blue-stem makes good feed, doesn't it?

A. Yes, fine feed.

Q. And that is fine feed during the entire year, is it not?

A. Yes sir, when it is not eaten up.

Q. Is it better when it is green or when it gets ripe and cured up on the ground in the fall?

A. Well of course now my opinion is about blue-stem when it is dry that it is better feed then than any other time.

Q. And when do the cattle put on the fat?

A. In the fall.

Q. And when the blue-stem has been cured?

A. Yes sir.

Q. And have you heard any expression of simple opinion by the cattle men in your country about when it is the best feed? What do other cattle men say about blue-stem?

A. It is claimed to be the best feed we have, blue-stem is.

Q. What time of the year?

A. Any time of the year that we have got, in fact all times in the year.

Q. But is it generally thought that when it is cured, and more or less dried that it is better than when it is green?

A. Yes sir.

Q. That is the general impression among cattle men in your part of the country?

A. Yes it is.

245 Redirect examination.

By Mr. KNAEBEL:

Q. You said the cattle have a natural tendency to stay around the ranches?

A. Yes, some of them do.

Q. Why is it that they don't stay all summer, then?

A. We keep firing them out in the hills.

Q. Is there any other reason?

A. Why we find there isn't the feed there for them, you know, not as good a feed, of course.

Q. You said that cattle could stray and graze profitably—that is the work he used,—the learned counsel—as far as Aspen from Mr. Light's place?

A. Yes sir.

Q. Now please explain what you mean by that?

A. Well, of course now, you say they could go out there, they would have to go on the road for a mile, probably, or a mile and a half to get on the range again. Well of course they could probably stray to Aspen, you see, from there and feed.

Q. Do you know anything about the condition of the grass and water that they would encounter in a trip like that?

A. Well, I wouldn't think it would be a very profitable scheme for a man to start them in that way, but a cow could go on through, and in fact they could go as far as Woody, you know, that is this side from our place.

Q. You mean they could do it and live?

A. Yes, they can do it and come out in fair shape, but
246 there are very few that does do it I think.

Q. There are other people that live in between Mr. Light's and Aspen? Ranchers in there?

A. Yes sir.
Q. They own cattle, do they?
A. Yes sir, they do.
Q. And do they have some use for the range up through there?
A. Yes sir.
Q. And use it pretty well, do they?
A. Yes sir, they do.
Q. So, do you mean to be understood by your answer to the counsel's question that it would be natural, and that cattle in fact would go from Light's and graze and grow fat between there and Aspen?
A. Well, not in any quantities; one might, or two stray off and do it, but I don't think it would be in quantities at all.
Q. In fact have they done it, and do they do it?
A. I don't think they do it now; I have, though, known them to do it from Light's.
Q. How many cattle?
A. Well, maybe we would find two or three there in the Fall.
Q. And that is all you mean by that, isn't it?
A. Yes sir, that is exactly what I mean by it.
Q. And the same way when you spoke of Carbondale and Glenwood?
A. Yes, sir, our cattle goes in there in the Crown country.
Q. Well, how many would go to Glenwood?
A. Never knew one to go to Glenwood,—that far.
247 Q. Or to Carbondale?
A. Well, we would pick up maybe twelve or fifteen head there in the fall late, you know, that would drift down.
Q. How long ago was that, Mr. Cookman?
A. I have done that since I have lived where I am. I used to work for Schloss who lived on West Sopris; we gathered lots of them out of the Crown country then.
Q. What do you mean by the Crown country?
A. It is this side of Carbondale a big country in there probably six miles square, maybe, I don't know.
Q. Is it shown on that map Exhibit 1?
A. I don't think it is; if it is I don't know where it is, the Crown.
Q. How many of Mr. Light's cattle grazed in the Crown country last year if you know?
A. I don't know; I haven't rode the Crown now for five or six years.
Q. When you said that Schloss had six or seven hundred and Tucker five to seven hundred, and Light had two to five hundred, and Zimmerman had some cattle and Chatfield had eight hundred or a thousand over in the Crown country——
A. Yes.
Q. Did you mean they were all grazing in an area six miles square?
A. They wasn't all in the country at all.
Q. *Were* were they?
A. Well sir, they run the Sopris Creek country.
Q. Did they go on what is known as the "forest reserve?"
A. Yes sir.

248 Q. So that your remarks concerning the Crown country were intended to be understood as including the range of the forest reserve?

A. Certainly it is included I said in the forest reserve too, it is not all in the Crown country; they wouldn't run on the Crown,—they have got that whole country from Sopris Creek to Crystal River, they generally run through that country, you know.

Q. And their habits are the same from that range as they are from the range near your place; that is, that they use the lower country first and then drift up on to the reserve; is that correct?

A. That is correct.

Q. Now I don't know whether I understood you, but you in answering yes or no to some questions put to you by counsel then it seems as if you said cattle would not stay in the forest at all if people didn't put salt there. Do you mean to be understood that way?

A. No sir.

Q. What did you mean?

A. That they would stay in the forest better, they stay where salt is better, in the forest or off of it; that is what I say, and that is what I meant when I said it.

Q. You don't mean that if no salt was put in the forest no cattle would go up there at all?

A. No sir, I do not mean that.

Q. It is generally regarded as good practice, isn't it, Mr. Cookman, to use first, as nearly as you can the range that is going to get covered up quick with the snow?

A. Yes sir.

249 Q. And save the range intervening between there and home, and that is going to last longer for use afterwards?

A. Yes sir it is.

Q. Now when you were speaking about salting, and about the cattle not staying in the forest, were you referring to the forest as a whole, or to those portions of the forest that are very high up where the grazing season is short?

A. Yes sir.

Q. Which were you referring to?

A. That is what I was referring to, to the high country where the seasons are short; we put our salt high where cattle will stay high, and we put our cattle low where cattle will stay low.

Recross-examination.

By Mr. WARD:

Q. Why, Mr. Cookman, do some of the cattle men over there refuse to put salt on the range?

A. I don't know I am sure.

Q. You answered counsel for the Government that the same conditions existed in the direction of the Crown country as in the direction of Aspen. Did you understand that to be your answer, that it was fenced up and there is no feed much?

A. Which, the Aspen country, you mean?
Q. Yes.
A. Why yes the cattle are not likely to drift that way.
Q. But you said that the same conditions exist down toward the Crown country as up toward Aspen?
A. Oh no, the Crown country is more open. You must have got wrong.

Q. The country towards Aspen is more fenced than the
250 country westerly?

A. Oh yes, it is more fenced, there isn't any way to get through unless through the lands.
Q. But there is a large amount of unreserved, unfenced land, you say down toward the Crown country?
A. Yes sir.
Q. And good grazing?
A. Yes sir.
Q. Throughout the entire year?
A. Yes there is good grazing in the Crown the entire year, as a general thing.
Q. There would be enough to support two or three hundred head of cattle easily, wouldn't there?
A. Yes, I should think a couple of hundred head of cattle, support them very nicely through that Crown country.
Q. How about those large numbers that used to run there years ago?
A. They didn't all run on the Crown country; I don't want you to think that they run all those cattle on the Crown; they were turned out in that country; they had the range and of course they had it to the top of the hills all north from there.
Q. And that range today, the lower ranges out of the forest reserve are about the same as they used to be?
A. Well I suppose they are; I haven't been over that range, you know, this year or last year either, I don't think.

Mr. WARD: That is all.

WITNESS: If I have misconstrued anything to either one of you I didn't mean to do it; I have been trying to explain it to you as it is.

251 Redirect examination.

By Mr. KNAEBEL:

Q. That Crown country, Mr. Cookman, is also used as a Spring range by a great many people?
A. Yes sir, it is.
Q. And would you say that that was a good, all-the-year-around range?
A. Well not—it is if there isn't too many cattle put on it.
Q. As a matter of fact, taking the conditions as they are, is it good for all the people who use it all the year around?
A. Well, take it with the other country, you know——

Q. No, I am talking about that country alone, not counting any part of the forest reservation?
A. Well, of course you have got to get them out of there.
Q. If you don't get them out what will happen to them?
A. They wouldn't be fit enough to probably fatten, they would get so thin.
Q. Would they stay in there of their own motion?
A. I don't think they would hardly.

Recross-examination.

By Mr. WARD:

Q. As a matter of fact, Mr. Cookman, the most of the cattle during the summer months are up on the forest reserve?
A. Oh, yes sir.
Q. And the Crown country is without cattle practically?
A. Yes sir.
Q. And the country north of Mr. Light's ranch and northwest?
A. Yes it is practically without cattle throughout the sum-
252 mer.
Q. And those that have permits there are trying to get the value of their money from the Government?
A. Yes sir.
Q. And keep them on the forest as long as they can?
A. Yes sir.
Q. And put salt on there, and make all they can?
A. Yes sir, they always have done that.
Q. And so, as a matter of fact, there are less cattle down in the valley lands than there used to be?
A. Yes sir, there is less cattle.

Redirect examination.

By Mr. KNAEBEL:

Q. And those that do not have permits, they try to get all they can out of the Government?
A. Yes, that is probably correct.

N. S. ASHLOCK, a witness called on behalf of the complainant, being duly sworn testified as follows:

Direct examination.

By Mr. KNAEBEL:

Q. Where do you live, Mr. Ashlock?
A. I live in Pitkin County.
Q. What town?
A. Well, I have been living for the last two years in Pitkin County at a little station on the Midland called Meredith.
Q. What is your occupation?
A. Forest ranger.
Q. How long have you been in the service?

A. For the past two years.

Q. Before that what was your business?

A. Working with stock and riding after cattle.

253 Q. How long have you been in that business?

A. Oh, about fifteen or eighteen years, I guess, or better.

Q. Here in Colorado?

A. Yes sir.

Q. In what part of Colorado?

A. In the western slope.

Q. Up in and around this same vicinity where Mr. Light is, or another part of the state?

A. Well, in other counties and in that vicinity.

Q. How long have you been familiar with the Roaring Fork Valley?

A. Oh it is perhaps three years that I have been familiar with it; I have been there on the range before that; I was on the range in the Fall of 1888.

Q. Now you know where Mr. Light's place is, do you?

A. Yes sir.

Q. How many times have you seen that?

A. Well, I could not state the exact time, probably fifteen or twenty times, maybe more.

Q. And have you frequently been over the forest reserve, that portion of it appearing on the map Exhibit 1 there?

A. Yes, I have been over that on several occasions.

Q. Did you ever make an examination of the condition of the range and country which lies adjacent to Mr. Light's, and accessible to his cattle when he turns them loose?

A. Yes sir, I have.

Q. And the condition of the country intervening between the patented lands running from Mr. Light's place southerly and the forest reserve, between the patented lands which run from Mr. Light's place southerly and the forest reserve?

A. Yes sir.

254 Q. What is the character and value of the range which would be accessible to cattle if turned loose from Mr. Light's place on the northeast; stating first what it would be in the spring of the year, and what if any changes would occur to it during the progress of the season?

A. Why my experience with such a range as that has been that that range is lower down and faces to the south, giving a southern exposure, and it is a great deal earlier range in the early spring than any other parts of the range, and that the grasses come earlier there; for that reason people turn out on such range as that early in the spring, and that would cause the range to be over-grazed earlier than any other part of the range; besides that grass starting earlier, along later it dries up and gets tough, and the ranges opened up earlier further, higher, are young and tender and the cattle naturally follow the grasses and the snow line as the snow goes off,—follow the range and this range after or during the middle of the summer is dry. There is no dampness for watering places there where the

cattle can water without going to those creeks, and when they lead down to the creeks for water it is natural for them to go to where they can get tender grasses and follow the trails to the ranges.

Q. And what then would be the result, so far as the ranging of the cattle was concerned, if the herded cattle were turned out
255 at the opening of the spring season on the range right northeast of Mr. Light's ranch?

A. Cattle turned out on a range like there is northeast of Mr. Light's ranch early in the spring, and grazed there for, say, three weeks or a month, it would be worthless after that time through the balance of the summer without there were unusually heavy rains, or something to replenish the grasses.

Q. And where would the cattle go?

A. The cattle would drift to higher range where the grasses were tender and better range, on to the forest.

Q. What makes you say that they would go on the forest. Are you familiar with the topography in this region?

A. Yes sir.

Q. And the trails?

A. Yes sir.

Q. Well, now, then, state why they would go on the forest in your opinion?

A. Well, there is different reasons; one reason is that the water is more plentiful; another reason is that the grasses are tender and in better grasses at the season of the year that I mention,—latter part of June; and there is other reasons that there is not, as a usual thing, salt put out low down anywhere on these lower ranges; salt is put on the upper ranges, and cattle that is running with cattle that is used on the ranches these cattle in this district, as in others, has used on the forest reserve for years past, and even though it was strange cattle that was turned in they would go with the cattle that
256 was located and raised there and drift on to the forest.

Mr. WARD: We ask to have this portion of the statement stricken, because the witness has not shown what cattle have been on this range, whether they are new cattle or whether they were born there.

Q. You say you have known this country for three years, and before that; isn't that true?

A. Yes sir.

Q. Do you know what the habits of Mr. Light and his neighbors have been in regard to the time for turning out the cattle?

A. Why in regard to turning out their cattle, the neighbors and Mr. Light also turns out as early as they possibly can.

Q. It is your business to keep track of cattle there, and has been, as a forest ranger?

A. Yes sir, it is my business; not in that particular district as much as it is in some others.

Q. Have you paid attention during the last three years to the custom and practice in this district?

A. Well, yes, to quite an extent I have; I have been interested

in all the districts, yes, sir, and as to the cattle I know that there is cattle there that has been there for several years, that has been grazed on the forest.

Q. Do you recollect any cattle that were owned by Mr. Light in 1906?

A. Why they was running under his brand and was claimed by him.

Q. The Box L. brand?

A. Box L. brand.

Q. Are there any of those cattle there this year?

257 A. There is a part of the Box L. brand cattle, yes sir, there, but they also carry a brand of "JW"; I understood that the Williams Brothers owns these cattle at this time.

Q. Can you state whether, without going into particulars, there were other cattle this year on that range which had been there for years previous?

A. Yes sir, there is also J. W. brand belonging to Mr. John White that has been there for several years; his cattle run on there.

Q. Are there others?

A. Yes there is.

Q. You need not state the particulars; I just want to know generally whether there were cattle there this year that had been there for a number of years previously?

A. There is Mr. Cookman and Mr. Findley..

Q. Now, then, you will go on and state if you will what the ranchmen there do with their cattle in the early spring, and what course those cattle take in their ranging from the time that they begin to graze near the ranges in the spring through the grazing season?

A. Well, the cattle are of course turned out on these lower ranges and there is two places on this range where they can get water handy. There is one toward Capital Creek, or east; there is no grazing on that particular slope there with water to speak of; in fact it is poorer than it is on the slope toward Mr. Light's place.

Q. What is the consequence of that in regard to the place

258 that they go to water and the direction in which they drift?

A. They would not drift that way, in my estimation.

Q. And in your experience?

A. In my experience; for the reason that there is no feed in that direction; cattle will water where there is feed as close as possible.

Q. So where would they go?

A. I would say that the cattle would drift towards Sopris Creek for water.

Q. Now is there any evidence on the ground that they have done so?

A. There is some evidence, yes sir.

Q. What is it?

A. There is a road leading down along Mr. Light's fence towards Sopris Creek, and from that road there is trails leading to the creek.

Q. Is there any continuation of those trails?

A. Yes sir, they continue on across the creek, and there is two or

three very plain trails leading from the East Sopris Creek into the forest reserve.

Q. How close do they pass to Mr. Light's place?

A. Well, one trail commences quite close to the north end of Mr. Light's fence—I suppose it is a pasture fence, it is adjoining his agricultural land and runs in a western direction to the corner of his fence and then turns southwest. This trail is a very plain trail; any one could follow the trail.

Q. You will state all about that trail, now, and what lies on each side of it, and what there is, if anything, which would give
259 the cattle a tendency to stay on the trail, or to stray from it.

A. This trail runs—it runs after turning the west corner of Mr. Light's fence it follows the line of the fence south to where his fence intersects Findley's, then it would bear, I would judge, as near as my recollection is, to the southwest, or in a southwesterly direction and runs along these fences for a distance of—not of course right along the fence, it runs quarteringly on the hill up the mountain to a wagon road that comes across in above through the ranches, I think it is Dougherty's place, if I remember right, or an Old Thompson; it runs through what is called an "Old Thompson Desert." This road leads on to the forest reserve in Hay Parks. The cattle going up this trail is compelled to lead off to the west and south, from the cause that the east side of the trail is fenced very near all the way up the East Sopris Creek. After leaving the fenced portion of the creek there is a cañon that is practically impassable for a distance of three quarters to a mile that the cattle would not get down to the creek for water; then this would lead the cattle to within a quarter to half a mile of the forest reserve line, in that direction, should they follow this course; but it not being a direct court- it is not likely that they would follow it, that they would drift on to the forest before they got that distance.

Q. How; in what direction?

A. In a westerly direction.

Q. Then is it true that the way to the forest is open to
260 cattle which have taken that trail?

A. Yes sir.

Q. And what of other ways?

A. Well, as I said before, there is another trail starting off——

Q. Wait a minute, you didn't understand. You stated that the direction toward the forest was open to them after they had gotten some distance on that trail?

A. Yes sir.

Q. And what about other directions?

A. Well, there is no other direction that they could go without going on the forest.

Q. Now tell about the other trails.

A. There is another trail leading from the lower end of Mr. Light's—well it is the north end of Mr. Light's ranch; it leads in a northwesterly direction. In crossing the creek on these trails at the north end of Mr. Light's ranch there is an abrupt ridge that goes

down immediately at the lower end of Mr. Light's ranch, *at the lower end of Mr. Light's ranch,* that is the north end of his ranch, of course water runs down hill there at Sopris Creek, it runs north and northwest there, and the trail that I have just mentioned leads out around, swings back around the corner of his fence and runs up East Sopris Creek.

Q. That is the one you have described?

A. That is the one I have described, and this other fence——

Q. That other what?

A. This other trail starts in a northwestern direction, and for a short distance it parallels the creek.

Q. What creek?

A. East Sopris Creek; then it gradually works to the west
261 until it reaches the forest reserve, and enters the forest reserve at the line where the forest reserve starts to run east and west, on the west of Mr. Light's ranch; the line runs west.

Q. Are there any topographic features which would tend to direct cattle into the reserve along the line of that trail, or to deflect them away from the reserve?

A. There is an abrupt ridge, as I spoke of, coming down close to the north corner of Mr. Light's fence.

Q. Do you speak of the north, or northwest corner?

A. Northwest corner. This would have a tendency to throw the cattle up on Sopris Creek in that way, because it is more practical for cattle to travel on a gradual grade, of course.

Q. Then you mean that would have a tendency to cause them to go around the northwest corner and take the trail you first described is that true; is that what you mean?

A. Yes, in going up East Sopris Creek; and, on the other hand, going into the reserve from the other direction that I spoke of after leaving the creek and following the hill on a gradual grade up for a considerable distance they cross over a small ridge into a draw; this draw leads directly toward the corner of the forest reserve there, as I spoke of, where it makes the turn from running north to west.

262 Q. Is there any water flowing in that draw?

A. There was none at any time that I visited it.

Q. But they reach water, do they, as they go up into the reserve?

A. There is water within a quarter of a mile after they enter the reserve line.

Q. And grazing?

A. Yes sir.

Q. Is that good or bad?

A. The grazing at the last time I was over that particular part was in rather poor condition, but farther up the mountain side was better all the way through.

Q. Do they have water all the way up?

A. Yes sir.

Q. How long does the open range,—I mean the range that is composed of vacant public lands accessible from Mr. Light's ranch,

remain sufficiently good to support any considerable number of cattle?

A. Well, I don't think that that range would be of any value to a stockman after the middle or last of June.

Q. That is, considering the conditions that exist there?

A. Yes sir.

Q. As to its use, and its altitude and the exposure to the sun, etc.?

A. Yes sir.

Q. I show you the photograph marked "Exhibit B" which has been referred to by defendant's counsel in connection with some testimony concerning the road which is depicted on it. Have you seen that road?

Q. Yes sir, I think I have seen that road.

Q. Where does it run?

A. It is a road running, as nearly as I can locate it, from
263 Mr. Light's ranch down toward the town of Emma.

Q. And where is Emma located?

A. Emma is located, it is possibly five miles northwest of Mr. Light's ranch on the Denver and Rio Grande Railroad.

Q. Do you know how that road was made, or what is was used for?

A. Why this road here, if I remember right, is a road running from Emma across through this Snowmass in Capital Creek country, and has now become a county road.

Q. What is that trail that appears on the other side of the gulch in that photograph?

A. The picture I think is misleading on account that it don't show this part of the topography here definite enough.

Q. Have you ever found any of Mr. Light's cattle upon the forest reserve?

A. Yes sir.

Q. Now just give *is* the particulars, dates, numbers, etc.

A. Well, I have seen some of Mr. Light's cattle on the forest reserve on August 28, 1907.

Q. How many?

A. I rode over the range and counted twenty-three head of stock cattle, that is, steers, cows and mixed, and counted one bull and eleven head of Light's horses of the Box L. brand.

Q. What was the condition of the lower range off of the reserve at that time?

A. The condition of the range was very poor.

264 Q. Did you see any cattle down there?

A. I seen some cattle,—not on the lower range, they were in a lane on the county road; they were not on what you could term the lower range.

Q. Did you make an examination to see whether stock were in quantities below the forest?

A. Yes sir. They were not in quantities below the forest.

Q. Did you see any of Light's cattle out of the forest near his place, or elsewhere?

A. I see one or two of Light's cattle below the forest; I know

it was just an instance that they got there, I guess, because they were over the ridge from East Sopris on the slope of the Capital Creek.

Q. What kind of cattle,—steers or cows?

A. Well, one that I remember was a cow; the other I disremember just what it was.

Q. Was there any water at that time of the year between Mr. Light's place and the forest reserve?

A. There was water in East Sopris Creek.

Q. I mean accessible to cattle turned out on the vacant range there?

A. I did not see but one place where there was any signs of water; this was a seep-spring on the mountain.

Q. Where?

A. Well, it is west of Findley's—west and south of Fin-ley's place.

Q. Was there any considerable quantity of water?

A. No sir.

Q. Available for how many cattle was it?

A. Well, if the cattle took all day for it, it might water fifteen or twenty-five head.

265 Q. And in respect of the public domain intervening between Mr. Light's place and the forest, how many head of cattle would that have supported, in your judgment at that time?

A. Between Light's place and the forest?

A. Yes, and south and southwest between Mr. Light's place on the east and the forest on the west, and also between the fences on the east and the forest on the west in the open strip?

A. Well, in my judgment, if they were herded there and taken to water, and nothing else was allowed in there they could run a hundred head in there.

Q. If they kept them there?

A. Yes sir.

Q. You are referring now to all the year around?

A. No, not all the year around; it would only be during the summer season; there is about three to five months there that they can't range, anyway, they have got to feed, the snow is too deep.

Q. When I say "year" I mean the grazing season.

A. Well, the grazing season.

Q. Did you ever find Mr. Light's cattle on the forest at any other time?

A. Yes, sir, I visited that range in May 1908, also in October 1907, and see cattle on the range in October 1907, on the forest reserve, of Mr. Light's brand.

Q. About how many?

A. Why at that time I was looking over some different fence propositions and I didn't take particular notice. I think I noted down ten head,—ten or eleven head.

Q. Scattered around in there?

A. Yes sir.

266 Q. Were you there in September of this year?

A. Yes sir, I was there in May this year, and in September.

Q. How many did you count in May?
A. In May I counted——
Mr. WARD: What date?
The WITNESS: The 7th day of May.
Q. Any other day in May?
A. I see that range on the 6th day of May.
Q. How many did you count during those days?
A. There was three head at that time that had entered the forest.
Q. That was very early, wasn't it, for the entering of the forest?
A. Very early.
Q. How were they branded?
A. With the "U Slash UU".
Q. How far up in the forest?
A. Not to exceed a quarter of a mile.
Q. Did you make any examination of the condition of the defendant's fences on this occasion in May?
A. Yes sir.
Q. You may state what you saw?
A. Well, I rode the line of fences completely covering the north section of Mr. Light's ranch on the west, north and east side; on coming to the fences I came from the forest boundary line down to the fence; I followed a trail down to Mr. Light's,—I would call it a pasture fence on the west side of his meadow and house where I came to a gap in the fence, there seemed to be a wire gate which was open.
Q. How wide was the gap?
A. Well, it was just a panel fence; they make these wire gates,—they simply cut the wire at one end close to the post and tie to pole,—tie the wire on the pole instead of the post and then loop
267 a wire from that for a gate which make it very convenient.
Q. Had that gate been thrown aside?
A. Yes sir.
Q. Were there any other openings in that fence?
A. From that I traveled south on the line of fence to quite a deep draw that runs down into Mr. Light's pasture there a distance, I could not say just how far—probably four or five hundred feed maybe, more or less there was another opening in this draw, a gap, which was open.
Q. In the fence, you mean?
A. Yes sir, in the fence.
Q. Did you see any other openings in this fence?
A. From there I traveled on south to where Light's fence intersects Finley's; there was a kind of a combination pole and wire gate, or bars—we commonly term it bars here—and these bars were down and the fence was open at this gap.
Q. Did you see any cattle at those places?
A. Well, there was cattle inside of Mr. Light's field ranch, and at that trip I think that was on the afternoon of the 6th, if I remember right—no it was on the 9th—if I remember rightly there was a bunch of cattle coming and going out through the bars, there was.
Q. Are you sure of that?

A. Yes sir.
Q. What brand?
A. Well, I wouldn't say in particular as to brands outside of Light's brands; I don't remember of taking any notes on
268 it; I do remember that I notices some of Mr. Light's brands there.
Q. And as to the other cattle you don't know what the brand was?
A. No, I wouldn't say; I think there was some of Finley's cattle there,—a few head.
Q. What was the condition of the ground at the places where these openings were into Light's place?
A. Well, the trail was worn very wide; it was almost as wide as a wagon road is, the width of the wagon wheels; the trail was used, had been used to a great extent.
Q. By what?
A. By stock—cattle.
Q. Did you find any of Mr. Light's cattle upon the reservation at any subsequent time?
A. Why none other, I didn't take any particular notice than the times I have already mentioned—on the forest reserve you mean.
Q. Did you make a trip in September of this year?
A. Yes sir.
Q. Where did you go then?
A. I made an examination of the range and the number of stock that is the number of stock that I seen on the forest, of Light's. I started and rode over the range on the east side of Mr. Light's ranch, east and north; rode through on the west side of Mr. Light's ranch into the forest, followed through the forest and in above Hay Parks, what is termed Hay Parks, and over on to West Sopris down a short distance on to the slope of East Sopris or about on the
269 divide in Hay Parks.
Q. Did you find any of Mr. Light's cattle on the Government land in the reserve?
A. Yes sir.
Q. How many?
A. I seen six head of "Lazy T V" brand.
Q. Was that the trip when you started out with Mr. French?
A. I started out with Mr. Burdick from Cookman's place—made the ride on the east.
Q. I am talking now about whom you were with. You didn't count any of the cattle that Mr. French counted?
A. No, sir.
Q. Is that true? Or McLaren?
A. Not of the six head I have mentioned; there was a head of cattle that I think Mr. French counted two more that was of the "U slash U" brand.
Q. Did you stay with Mr. French, or separate from him?
A. Separated from Mr. French and went over this range that I spoke of until I come to Hay Parks; there I met Mr. French and

Mr. Burdick, no—I didn't meet Mr. Burdick but from the Hay Park I and Mr. French traveled together.

Q. Did you find those six head while you were in company with Mr. French or while you were separated from him?

A. While I was separated from him.

Q. Did you find any of Mr. Light's cattle outside of the forest?

A. Yes, sir.

Q. How many, and how near the forest line?

A. I think it was—well there was something like—I disremember, I can——

270 Q. I don't care about the mathematical number; just give the approximate numbers, Mr. Ashlock.

A. Twenty-six head.

Q. How near to the forest line was it, approximately?

A. They were some of them within—well I saw some of them in company as far south—within two hundred feet of the forest line.

Q. Any of them near the trail you spoke of running up by the fences?

A. Yes, out where the trail swings under the hill that I spoke of, going into the corner of the reserve.

Q. From the north?

A. Yes, from the north.

Q. In your judgment, what is the fact as to whether the portion of the forest shown on exhibit 1 here is, or is not overgrazed?

A. Well, the lower part of the forest is overgrazed until you get above the line of what is termed the "Hay Parks" from there on the grass gets some better near the upper regions.

Q. What would be the effect of continued over-grazing of that region upon the grazing, upon the soil of the forest?

A. Why the grasses would all be killed out and the ground would dry up, there would be no moisture, timber would naturally die for want of moisture if there was no protection, if the ground was tramped up there would be nothing to hold moisture in the ground, and it would be washed away and be valueless.

Q. What would be the effect upon the possibility of reforestration in that region?

271 A. Well, if those conditions were allowed to exist there would be no possible way of reforesting that place because there would be no fertility to the soil.

Q. Have you ever heard Mr. Light make any declaration as to his intention in regard to taking out permits for cattle on the Government reservation.

A. Yes, sir, I have.

Q. State the occasion briefly, and what he said.

A. At a stockmen's meeting and convention at Basalt on February the 23rd, I think, 1907, Mr. Light got up and made a speech before a crowd of oh, possibly sixty or seventy of the farmers and stockmen in that district and declared that he would not take out a permit, and that he didn't want any of the others of his neighbors to take out a permit: he says, 'We won't any of us take out a permit, we will all go to jail together;" he says, "I don't want any of you

to take out a permit." He made quite a lengthy speech, probably twenty minutes or more.

Q. Was that the meeting at which the written agreement was drawn up and signed.

A. Yes, sir.

Q. Did you see that?

A. I did not see the written agreement but I knew of it, I was there and I saw them have it, and saw the people signing it.

Q. Did you hear Mr. Light make any statements about it?

A. Why, he asked everyone to sign this agreement.

Q. Did he state what the agreement was?

A. The agreement was a resolution that they would not
272 make application nor pay the grazing fee.

Q. Is that what he said it was?

A. Yes, sir.

Q. Have you heard him state on any other occasion anything in regard to his attitude on this subject?

A. No, I have never had any conversation with Mr. Light on the subject further than that.

Q. Do you know what, if any, effect has the attitude taken by Mr. Light in this regard had upon the difficulties of administering this reserve, in your experience?

A. Why the people object to us moving their cattle around for the reason that they say that if we move their cattle up on the mountain and Mr. Light don't pay his grazing fee, we haven't got any control over him, we can not move his cattle, and that they don't want to move their cattle up there when we can not control his, for the reason that he gets the benefit of the lower range, and they get only a short season of the upper range in the summer time, and this lower forest range is eaten off during the summer while they are above, by Light's cattle, and they say it ain't fair that they should pay a grazing fee and not get those benefits where Mr. Light grazes without paying the fee and gets the benefit.

Q. And what effect, if any, does that have upon the feasibility of equalizing the grazing on the entire forest area there?

A. It has a great deal of effect; when the people all take
273 out the permits they are all under our jurisdiction, and we can allot the ranges; if we find that the range is over-grazed we can decrease the number on this range and change it to some other part of the district where the grasses are sufficient; therefore, we can protect this particular range that is being over-grazed. If Mr. Light had a permit there and was paying a grazing fee we could require him to put his cattle where we wanted him, to protect that range. As it is we can not.

Q. As it is do you or do you not find it feasible to require others?

A. Sir.

Q. I say as conditions are, do you or do you not find it easy or feasible to require those who take out permits to move their cattle.

A. They object to moving their cattle, when Mr. Light runs them where he pleases.

Q. Do you know this Crown country that has been talked about, which was mentioned in the examination of Mr. Cookman?

A. I am not thoroughly familiar with the Crown country, no, but know it to some extent.

Q. Well, state what the conditions are, if you know, in that Crown country with respect to the grazing throughout this grazing season?

Mr. WARD: We object to the question and the answer, because he said he is not familiar with it.

274 Q. Go on.

A. It is a range that is handled under the same conditions as this range was to the north of Light's range; it is a low range without any supply of water besides these streams that run around the foot of it; you take Roaring Fork, there is no cattle goes down Roaring Fork to water there; the steepness of the slope prevents them from watering from the Roaring Fork or the fences and the same condition exists to some extent on the Crystal river side.

Q. And how long is the range good there in the spring, if you know?

A. Well, I am not posted as to the length of time the range is good there; it is owing to the conditions of the weather, whether it is raining or not, but I would judge it would dry up and be in the same condition as the other ranges similar to it, as soon as other ranges do.

Q. Have you ridden over that range?

A. Yes, sir.

Q. Have you herded cattle on it?

A. No, sir.

Q. Have you been over it enough to feel that you can form a conclusion, satisfactory conclusion, in respect to it?

A. In respect to it—in what way?

Q. As to its similarity to the range around Mr. Light's place?

A. Yes, sir, I think I can. There is very many districts in that country that is situated the same that I have been on; there are several other places that the same conditions exist.

275 Mr. WARD: Defendant asks that this last testimony in reference to the ground be stricken out as being based upon comparison, and not upon the personal knowledge of the witness.

(Adjourned until the hour of one o'clock P. M.)

ONE O'CLOCK P. M.

Solicitors Present:

Ernest Knaebel, Esq., on behalf of complainant.
Ethelbert Ward, Esq., on behalf of defendant.

Cross-examination of N. S. ASHLOCK.

By Mr. WARD:

Q. Mr. Ashlock, you described in your direct-examination two trails leading to near the northern extremity of Mr. Light's ranch

southwesterly into the reserve; the most southerly trail you described first. Where does that trail begin with reference to East Sopris Creek?

A. Why it is at the north line of Mr. Light's fence where Sopris Creek leaves the Light land.

Q. I hand you defendant's Exhibit C and ask you whether you recognize that portion of the territory, and if you can indicate there where this trail begins, if it appears?

A. Yes sir, I think it is very plainly shown on this picture where one of the trails begins,—the trail running southwest.

Q. The trail running southwest?

A. Yes sir.

Q. That is the most southerly trail?

A. Most southerly trail.

Q. Does that picture show where the trail that runs over to the west begins, or do they both begin about the same place?

276 A. No, I would think that the trail that runs northwesterly from the start there would be just a little down the stream from there.

Q. Can you see any trails on that photograph that would indicate running down the creek in a northwesterly direction?

A. Why, all of the trails starting out from the creek at the end of that fence run in a north—almost a northwesterly direction from that to a westerly direction.

Q. And then it turns?

A. Then it turns south.

Q. I hand you Exhibit B., and if it should appear by the testimony later that that was taken in the vicinity of the same photograph C. looking northwesterly up Sopris Creek,—can you see any signs of a trail in the sage-brush on the right side of the road?

A. On the right side of the road?

Q. Yes, going down, on the eastern side of the road, which is the right of the photograph, are there not some trails that are not very clearly defined on that photograph?

A. Well, the country is so open and so barren there at that point——

Q. That you can not tell from the photograph, then?

A. (Witness continuing:) —that most any place might look like a trail on that hillside.

Q. Now you say the most southerly trail that you have first described begins approximately as shown on this photograph?

A. Most southerly trail?

277 Q. Yes, on this one here that runs,—slopes to the ranges—begins approximately there?

A. Yes.

Q. Now just describe, Mr. Ashlock, the way the trail runs in a southwesterly direction again.

A. The trail begins at the north line of Mr. Light's fence and runs in a westerly direction to the corner of the northwest corner of what I would term his pasture fence there, and then it turns south and runs on a line almost parallel; of course it varies a distance from

the fence a little until it reaches Mr. Findley's the corner where Mr. Light's fence intersects Findley's fence.

Q. That point is the location of the photograph Exhibit 3 of complainant?

A. Yes sir.

Q. Now how does the trail run going to the southwest from there, Mr. Ashlock?

A. Well, the trail runs along in the direction of Mr. Findley's fence which in my judgment is neither north nor south nor east nor west in that locality.

Q. It rather follows the trend of the creek, doesn't it?

A. Yes sir.

Q. And most of the fences on the ranches above Mr. Light's home more or less follow the trend of the creek?

A. Yes, for a ways up there they do.

Q. And how far up do those fences run; can you tell by reference to this map, or by your recollection how far beyond the Findley corner just spoken of?

A. Why it is something like half a mile to the first draw I think that this trail runs to; I wouldn't say that it was a half a mile, but it is something like that.

278 Q. I was speaking of the fences.

A. Yes sir, and the fences also. You are not speaking of the trail?

Q. No, I am asking about the fences that cut off, fence these ranches along East Sopris Creek above Mr. Light's. There are several ranches above Light's aren't there?

A. Yes sir.

Q. And they are all more or less fenced in?

A. Yes, more or less fenced in.

Q. And the westerly fence of these ranches follows more or less the trend of East Sopris Creek?

A. Yes sir, the trend of East Sopris Creek.

Q. Now those fences run to within what distance of the forest reserve before they stop, would you estimate?

A. Why I would say the distance wasn't over approximately a mile and a half.

Q. Now the trail that you speak of, after leaving the Findley corner, follows in a general direction along the line of those fences?

A. I say that the trail follows along the general line of Findley's fence until it gets to the first draw, approximately half a mile south of the corner where those bars is.

Q. Yes.

A. Then there is a pretty well defined road and trail leading from there on to the forest.

Q. Across the hill, or in the direction of these fences?

A. Why across the hill.

Q. You spoke awhile ago of a cañon?

A. Yes sir.

279 Q. Up at the head of East Sopris Creek I think you said this trail went up about to the Old Thompson Desert; is that correct?

A. I don't know whether it is a desert or a homestead, but it is known as the "Thompson ranch."

Q. It is known as the Thompson ranch. That is the ranch that is higher up East Sopris Creek; is that true?

A. I don't know, I believe these fences run as high as any other one on that side of the creek.

Q. Now does that trail come up anywhere near that ranch?

A. It has to bear towards the forest line on account of the fences.

Q. When it gets there?

A. Before it gets there, in order to get around the fences, for that fence runs up on the hill to some extent.

Q. And just above the Thompson ranch I understand you to say there is something like a cañon?

A. Yes sir, there is something like a cañon up there above the—I wouldn't be sure,—it starts in, the cañon starts in or about along the Thompson place.

Q. And just before this trail reaches the cañon part it branches out more westerly towards the reserve?

A. No, there is a road that leads through the Thompson place going out on to the hills from the forest on to the forest reserve.

Q. And does the trail join that road?

A. The trail—I think it joins the other road that I spoke of first.

Q. Where does that road run?

A. That leads to the top of the ridge up into the forest.

280 Q. So then, the trail that you first spoke of, that southerly trail, branches off before it gets anywhere near the Shuttleworth and Robinson ranch; or do you remember?

A. I think there is a trail—there is a trail still on up around those fences toward the——

Q. As a matter of fact, Mr. Ashlock, you find more or less trails on the outside of most fences on the western slope, don't you, fences that have been there any length of time?

A. Yes, where stock travels on the range there is trails outside of the fences.

Q. Isn't there a tendency for cattle in the fall to go down to the ranches where they are fed, and walk up and down the fences waiting to get in?

A. They do to some extent.

Q. Now, Mr. Ashlock, you have noticed trails on other parts of the range than right in there, haven't you?

A. Why there is now and then of course trails on the hillsides, yes sir.

Q. There are trails, as a matter of fact, running in most directions over those hillsides in that neighborhood, aren't there?

A. I don't remember of but one defined trail, what I would call a trail; of course this trail runs along somewheres near the boundary of the forest and enters into the forest more to the northwest corner there,—north and west corner.

Q. And you are tracing, if possible, some trails that would lead from Mr. Light's northwest corner into the forest?

A. Sir?

Q. You were trying to find, if possible, some trails that lead from Mr. Light's northwest corner into the forest?

A. No sir.

281 Q. You were not looking for trails then?

A. No sir.

Q. That kind of trails?

A. No sir.

Q. You were not looking for trails that ran in any other direction either, were you?

A. Why not in particular.

Q. But is it not a fact from your experience in the western country that there are a large number of trails that lead from the hills down to water in almost every part of the country?

A. Oh yes, there is trails leading to and from water.

Q. And also cross-trails in almost every range you have ever been over?

A. Yes, there is cross-trails.

Q. Now you spoke of having made an examination of the west fence of Mr. Light, north of Finley's corner?

A. Yes sir.

Q. And you saw two open places in that west fence, and also open bars on that day?

A. Yes sir.

Q. That was the 6th or 7th of May, was it not,—1908?

A. Yes sir.

Q. At that time Mr. Ashlock what was the condition of the grazing upon the Holy Cross forest reserve near Mr. Light's ranch?

A. At that time the range had not opened up on the higher part of the reserve.

Q. Would there have been much danger of cattle going upon the range at that time and eating the range, to the detriment of the tres on the range?

A. I think not as high up as the timber-line of the spruce and pine bushes.

Q. But they might have gone upon the lower portions of

282 the range where there are no trees,—the forest reserve where there are no trees?

A. I have seen cattle on the lower portion of the range.

Q. You did see on one of those dates three head, didn't you, on the lower portion of the range; did I understand you right?

A. Yes sir.

Q. But that was where there were some trees?

A. It was in the quaking asp.

Q. Mr. Ashlock, did you examine to see whether or not there was another fence somewhat east of the west fence that you spoke about seeing gaps in, inside of Mr. Light's farm?

A. I did notice a fence, yes.

Q. Did you notice how that fence ran?

A. It run almost parallel with the outside fence, as near as my recollection goes.

Q. Did you make any examination of that fence to see whether or not there were any gaps in it, or the gates were open that day?
A. I did not.
Q. Did you see any gaps or open gates in that fence that day?
A. I don't remember of seeing any.
Q. Did you notice to the east of the second fence of which we have just spoken, over on the meadows,—you noticed a lot of cattle there that day, did you?
A. There was cattle in both enclosures.
Q. Where were most of the cattle to the east, or to the inside fence, or to the west of the inside fence?

283 A. Since recalling that now I think that the principal part of the cattle were in Mr. Light's meadow.

Q. Did you notice that day whether or not the gate on the northeasterly side of the meadow lot near the road was open?
A. On the northeasterly?
Q. Northeastern side of the meadow pasture diagonally across the creek from you?
A. There was no gap open on that side that day.
Q. You didn't notice any gate open?
A. No sir.
Q. Did you notice a gate up there, that is wire, what they call a wire gate,—just a wire gate?
A. I did not.
Q. Do you recall quite a severe storm that had occurred somewhere along the 3rd or 4th of May, in that country, with a fall of snow?

Mr. KNAEBEL: That is objected to as extending the cross-examination unduly beyond the limits of the direct.

Q. You don't recall that?
A. I don't recall that.
Q. You spoke of seeing some cattle to the west of Mr. Light's ranch and near the bars that were open, and said that they were Mr. Light's cattle. Had those cattle shed at that time?
A. Not altogether I don't think they had.
Q. Did you have any difficulty in reading the brands on them?
A. No I think Mr. Light's brand was quite plain.
Q. Was that the same time that these photographs were taken, exhibits 3 and 2?
A. Yes sir.
Q. Were you there when those photographs were taken?
A. Yes sir.
Q. Are any cattle shown on those photographs?

284 A. I think not; I think that the cattle went away from there before we had taken the photographs; the cattle were right close, standing here, the brush would probably hide them in the picture.

Q. Mr. Ashlock, from your knowledge of ranges and of water, would you say that the range north and northwest of Mr. Light's enclosing the Crown country is poorly watered?

A. I can say that that country is poorly watered with the exceptions of the streams at the foot of the mountains,—foot of the hills.

Q. Well won't streams always make a great exception about water?

A. Yes sir.

Q. Now considering the streams and not excepting the streams, is that territory poorly watered?

A. Not excepting the streams?

Q. Including and considering the streams of water is it poorly watered; that is what I want to know?

A. I consider the range is poorly watered.

Q. There is plenty of water in West Sopris Creek, isn't there?

A. Yes sir.

Q. Never goes dry?

A. Not to my knowledge.

Q. How about East Sopris Creek; in East Sopris are there the same conditions,—plenty of water?

A. The same conditions I think.

Q. Are the banks so precipitous as to prevent cattle from getting water?

A. No sir.

Q. Why would you consider, then, that that territory is poorly watered?

285 A. For the reason that cattle can not be handled profitably for market on a range like that for any purpose, because cattle will not do well where they have got to travel a long distance for water.

Q. What would you consider traveling a long distance for water?

A. Well, anything over a mile and a half.

Q. Is there any portion of that territory more than a mile and a half from water?

A. There is.

Q. What portion?

A. On that Crown mountain.

Q. What distance are some portions of that territory from water?

A. Well, I could not give the exact distance, I would have to approximate the distance.

Q. Approximately.

A. In the way cattle would have to travel, two to two and a half and three miles.

Q. And you consider that it is harmful in cattle grazing for them to travel two and a half to three miles to water?

A. I do, with the condition of the range that they are grazing on, in a locality like that.

Q. What difference would there be as to the distance with this range or any other range?

A. On a good range they could drift from one creek to the other for a distance of two or three miles and feed; they would be putting on flesh in that time.

Q. Is it not a fact, Mr. Ashlock, that cattle stray and drift until

they get thirsty and then they make a straight shoot for water as near as they can?

286 A. Not where water is plenty in the range they don't.

Q. But if it is a badly watered range like this range is, according to your opinion, won't they?

A. They graze and do without water until sometimes they suffer, and they travel very rapidly to water; then they don't leave the water again, and therefore they are not grazing all the time, and that is the reason that cattle look so tough and hard in localities.

Q. And where they do have to travel as much as two miles and a half or three miles they generally travel over the trail, and yet graze, do they?

A. No I don't think they graze where they go out on the range like that, and getting to water.

Q. And that would have a tendency to make a great many trails in this territory on account of the difficulty of getting water?

A. No, I don't think that it would have a tendency to make a great many trails; cattle usually travel for certain water holes in a locality like that that they come to.

Q. But it would have a tendency to make those trails well defined, wouldn't it?

A. Yes sir.

Q. Do you know anything about there being two lakes in the Crown country range?

A. Yes sir.

Q. Are they there?

A. They are; I have seen one of them.

Q. Mr. Ashlock, you spoke about salt, and the difficulty in getting the cattlemen to put salt upon the range. What reasons

287 did they give for that?

A. They said that they didn't feel like they ought to be compelled to put salt out on the range unless we could compel Mr. Light to put out salt.

Q. They made no objection to the fact that they had to put salt away up on a high range?

A. They had no objections to putting salt up on a high range provided the cattle could be put up there and held up there and they would get the use of the lower part of the forest in the fall as the cattle came down.

Q. But you found it practically impossible to hold cattle up there on the high range, didn't you?

A. Not where we put salt, and the cattle is properly located.

Q. Did any one besides Mr. Light refuse to put up salt when told to do so?

A. Not to my knowledge.

Q. So then the objection was verbal, practically?

A. Sir.

Q. The objection was simply talk? They put the salt on the range when you told them to, didn't they?

A. Why I understand from the rangers that they did put salt there, yes.

Q. So that you can not accuse Mr. Light of causing them not to put salt up there, according to your understanding?
A. No sir.
Q. Now do cattle injure a forest in grazing through a forest?
A. Not where it is not grazed too heavily, I don't think, they don't injure it.
Q. Was the Holy Cross reserve in the vicinity of Mr. Light's grazed too heavily in 1908?
A. I think that the Holy Cross forest even before it was
288 the Holy Cross forest was grazed too heavily in that vicinity.
Q. Was the excessive grazing in any manner due to the fact that you permitted too many cattle to graze up there,—that your Forestry Service permitted too many cattle to graze up there?
A. I think not.
Q. To what do you attribute that fact that certain portions of the Holy Cross reserve had been over-grazed?
A. The improper handling of stock.
Q. Who failed to handle the cattle properly?
A. The over-grazing there was caused from the cattle not being handled properly by the users.
Q. In what particular?
A. They objected to taking the cattle up and scattering them, on the ground that Mr. Light had not paid the grazing fee, and that they hadn't ought to be required to herd their cattle when he let his run at large, and eat a range that they should have.
Q. Do the rules of your Service require the owners of permits to herd their cattle upon the forest reserve?
A. If necessary, yes sir.
Q. Did you require any of those cattlemen in that vicinity this year to herd the cattle?
A. They moved the cattle as directed by the ranger.
289 Q. They did move them when directed?
Q. I say they did move their cattle when directed.
Q. Did they this past summer move them when directed?
A. In this particular district I don't know whether they did or not.
Q. Did you ever hear of any complaint saying that they would not handle their cattle according to the directions of the Service?
A. I heard them say they would not pay a grazing fee if Mr. Light didn't.
Q. They did pay the grazing fee, didn't they?
A. Yes sir.
Q. And did put up salt, didn't they?
A. I guess they put up salt.
Q. And they did do what the rangers told them to do in reference to their cattle, didn't they, so far as you know?
A. I think that is the report of the ranger, yes, sir, in that district.
Q. I yet fail to see why any portion of this range was over-grazed. You say it was because people didn't properly handle the cattle. Now will you tell me in what particular they failed to handle the cattle properly so as to overgraze this range?
A. Why in handling the cattle, Mr. Ward, if Mr. Light had had

a permit we could have compelled him, or any of the rest of them, to move their cattle to another part of the forest, or another part of the district, to overcome this overgrazing so that the range would be rested and reseeded.

Q. Well, couldn't you have done the same thing independent of the small bunch of cattle belonging to Mr. Light?

290 A. It could have been done, I expect.

Q. Was it done?

A. I don't think it has been done.

Q. Was any attempt made to do it?

A. In salting I think there has been an attempt made to get the salt up high.

Q. I understood you to say the salt was placed where it ought to be placed?

A. Well, that is my—I have been informed that way.

Q. And what per cent of cattle would naturally go high up on the forest reserve, do you think?

A. What per cent?

Q. Yes.

A. From the lower ranges?

Q. Yes.

A. Well, I would think that it would be four-fifths of them.

Q. Four-fifths of them; but not all at one time?

A. Well, the majority of them go at one time in the spring when they start to go on the range.

Q. When do the cattle go up on the high range in the spring?

A. That is owing to the time spring opens up, and the season.

Q. In 1908 what would you consider was the time in which cattle on that range would of their own accord go up on the high range of the Holy Cross Reserve?

A. Oh, along in the month of June.

Q. Are the flies any ways troublesome during the months of June on the high range?

A. Yes, during the latter part of June, and some in July.

Q. Does that have a tendency to make the cattle leave the high range?

A. The cattle take to the timber to quite an extent during the fly season; fight flies in the timber.

291 Q. In the quaking asp?

A. In the pine and spruce, too.

Q. The object of putting salt on the high range is to toll the cattle up there and keep them up there, isn't it?

A. Yes sir, to use the grazing and eat off the forest to the best advantage.

Q. To keep them there while they otherwise might leave?

A. Yes sir.

Q. When you made the search for Mr. Light's cattle upon the forest range do you think it possible that some of the same cattle might have been counted by the other rangers or supervisors, or assistant supervisors?

A. The particular part that I went over couldn't have been counted

by the other rangers or supervisors, with the exception of Burdick, who accompanied me on that part of it.

Q. And you made quite a careful investigation as you went along, didn't you?

A. Yes sir.

Q. So you didn't probably miss very many of Mr. Light's cattle?

A. I missed a good many cattle that I didn't go to see at all, yes sir.

Q. How do you account for the fact that so few of Mr. Light's cattle were found upon the range at those times?

A. Well, one way I account for it I didn't ride over very much of the territory myself.

Q. That accounts for the fact that you didn't see any more, does it?

A. Why that would account for it in one way, yes, sir.

292 Q. So you don't think, then, that a careful search was made for Mr. Light's cattle on the forest range?

A. I don't know as to what country, what part of the reserve the other men rode on, or how careful a search they made of that part.

Q. But you did make a careful search on your part?

A. What I went over.

Q. And you went over it carefully so as not to make a mistake in the brands?

A. Yes sir.

Redirect examination.

By Mr. KNAEBEL:

Q. It is an easy matter to cover all of that range that is grazed on by Mr. Light's cattle on the forest, in a short time?

A. No, I wouldn't say it is.

Q. You say you made a careful examination. You refer, then to the fact that you carefully examined all of the country feasible from the line of your route the way you rode?

A. Yes sir.

Q. Now would it be easy or would it be hard to cover the entire territory for the purpose of ascertaining the exact number of Mr. Light's cattle that were on the reserve, on any one day or at any one time; and how many men would be required for that purpose on a single day.

A. The way the cattle was running, and scattered at the time I was through there I would think, to make a close investigation, that it would require at least twenty men two or three days to make

293 that examination and get everything that Mr. Light had in there, to be sure that it was.

Q. Is it a rough country up there?

A. Very rough country; the cattle were scattered in small bunches, and into the timber in all directions,—very difficult to get to see all of them.

Q. You spoke of being accompanied by Mr. Burdick?

A. Yes sir.

Q. Was that on all of the occasions that you have testified to, when you found Mr. Light's cattle on the reserve?

A. No, as I stated in the direct-examination I think that Mr. Burdick accompanied me to the Hay Parks.

Q. On which visit?

A. On the visit in September.

Q. 1908?

A. 1908, and then from the Hay Parks I rode with Mr. French on the return trip.

Q. Something was said about there being lakes in this Crown country that Mr. Ward has mentioned. Do you know of a lake there called Dinkle Lake?

A. Yes sir.

Q. Is that accessible to cattle, do you know?

A. The upper portion of it is, yes.

Q. When did you see it last?

A. On the trip I made through there in September.

Q. Did you make an examinaion of it to see whether it was fenced or not?

A. No sir, I did not.

Q. When did you go to it.

A. I went,—well I could not state the exact distance; it is something like half a quarter I suppose from the south end of the lake.

294 Q. Now are there any other lakes in that Crown country that continue to afford water supply for cattle throughout the summer?

A. I couldn't say as to that.

Q. In regard to whether or not patrons of the reserve have refused to salt. You said that you had learned thus and so by report. I would like to know whether that particular district, for the purpose of requiring salting or other measures for the proper distribution of stock has been under your control directly, or under that of some other ranger?

A. Under another ranger.

Q. Who is that?

A. Mr. Burdick. In 1908 it was under the direct supervision of ranger Cyphers.

Mr. KNAEBEL: That is all.

Mr. WARD: That is all, Mr. Ashlock.

FRANK A. POWELL, a witness called on behalf of the complainant, being duly sworn testified as follows:

Direct examination.

By Mr. KNAEBEL:

Q. How old are you, Mr. Powell?

A. Twenty-eight, past.

Q. And what is your occupation?

A. Forest Service.

Q. Ranger?

A. Yes, well I am a guard really.
Q. How long have you been in the Service?
A. Since May 20th.
Q. Of this year?
A. Of this year.
Q. How long have you lived in Colorado?
295 A. Why I have lived here approximately twenty years.
Q. In what place?
A. Well mostly on Snow Mass, Pitkin County.
Q. That is right in the vicinity of Mr. Light's home?
A. Yes. Snowmass and Capital, and then I have been away; I have been to Wyoming and different places around.
Q. Was that your boyhood home up at Snowmass?
A. Yes.
Q. Have you had any experience with the herding of cattle?
A. Why yes, I have done that mostly all my life off and on; of course I have broke horses and punched cows and bought some cattle, and sold cattle, etc.
Q. And have become more or less familiar with cattle habits and with range questions?
A. Yes sir.
Q. Do you know this Crown country that has been spoken of by the counsel for the defendant?
A. Yes sir.
Q. Have you ever been there?
A. Yes sir, well I have been there several times.
Q. During what years, or how long ago?
A. Why I was there this year; I suppose I have been there,—Oh I have been there twenty times, I suppose, this year since May 20th.
Q. And before that had you ever been there?
A. And before that, let's see—about three years ago I was there twice during that summer, and before that I could not say, but I have been there on and off every year.
296 Q. And you have observed the condition of the range there at different times of the year?
A. Yes sir.
Q. You may describe it.
A. Why in my estimation it is a very poor range,—always has been; there never has been any water there to speak of; the only water is down at a ditch running out of Prince Creek; that is way down on the west side of the range, that is the Big Four Ditch.
Q. How far away is that from Mr. Light's place?
A. Mr. Light's, well that is, oh I should say ten miles, approximately; of course I don't know exactly.
Q. What is the character of the herbage,—feed?
A. Well, there is blue-stem there, a little blue-stem, and on the north side there is choke and piñions and sage-brush, and a few quaking asp.
Q. Cattle don't use those things, do they, for feed?
A. No, not very readily they don't unless they starve they sometimes browse on them.

Q. About how much of open range is there over in that Crown country?

A. Well, I never made an estimate of it; I should judge *they* was five or six miles there each way.

Q. And how many cattle do you think that would support throughout the entire year, except the winter?

A. Well, it might support a hundred head if they could be driven on there and kept on there.

Q. Why would it be necessary to drive and keep them there?

A. Because they would never stay, there is no water, the
297 Crown country has less feed and no water unless they go down to West Sopris or Prince Creek.

Q. How far would they have to go?

A. From the top?

Q. Yes.

A. Oh they would have to go three miles and a half.

Q. And what would be the condition of the feed there as the season advances into June and July?

A. It just dries up, there is no feed.

Q. Then where do the cattle go which are put on there?

A. On the forest reserve.

Q. And enter it from the north?

A. Enter it from the north—well no, let's see,—it is the west boundary line.

Q. Now look at Exhibit 1 and state about where this Crown country would lie?

A. The Crown lies in here (indicating on plat).

Q. And beyond?

A. Yes, up this way (indicating on plat,—and referring to note book).

Mr. WARD: We object to the witness referring to his note-book. He has lived there all his life and if he can not tell where it is he ought not to look at his note-book.

Q. Near to what township?

A. Township 9, approximately.

Q. And what range?

A. 86 or 87, I am not positive as to that.

Q. I show you Exhibit 4, in which this indicates the forest reserve, and on which I have marked the letter "L" at the point corresponding with the Light ranch, as shown on Exhibit 1, and ask you to point out, if "L" represents the ranch of Mr. Light,
298 in what direction the Crown country is on Exhibit 4?

A. It would be northwest of Mr. Light's ranch.

Q. And about how far northwest?

A. Why it would be in township 8 south, according to this.

Q. Now, generally speaking, have you been all over the country, the vacant public domain which lies north of the forest reserve on the north boundary of the forest reserve as it appears upon Exhibit No. 1?

A. North of the forest reserve?
Q. Yes.
A. Why I have approximately; of course I couldn't go over all of it, as some of it was too steep.
Q. For about how many miles to the north and northwest of that particular portion of the north line of the forest have you ridden?
A. Why where do you mean, opposite Mr. Light's ranch?
Q. To the north and northwest of the north line of the forest?
—. ——.
Q. (Question read by stenographer).
A. Well, I have ridden over all the country that lays between there and Sopris Peaks and the Crown.
Q. Now do you know approximately how many cattle are turned out there each spring by people living near there?
A. Why you mean on East Sopris, or Prince Creek?
Q. The region I am referring to and that you have referred to as the Crown country.
A. In this country from this side I should say that there was, oh, approximately five hundred head—that is from the Sopris Creek, and then from the Prince Creek side it would be,—
299 well maybe seven or eight hundred head.
Q. Do those cattle go in there each year at the opening of the spring season?
A. Yes sir.
Q. And state if you know where they go for their summer feeding?
A. They go on to the reserve,—the Holy Cross forest reserve.
Q. For what reasons?
A. Because there is no grass outside.
Q. Do you know about the custom and practice of the cattle owners who live near and in the vicinity of Mr. Light's ranch, as to the time of the year when they turn out their stock?
A. Why they turn them out as soon as possible after the snow is off; that is along in—sometimes in April and sometimes in May.
Q. Now it has been testified here that all of those people except Mr. Light have taken out permits. I ask now whether during the last two years to your knowledge it has been the practice of these people to drive their stock upon the reserve when they turn them out, or at any time?
A. Well, you see I just went there the 20th of May this year and most of the cattle was on the reserve at that time; still they was quite a few up and down the Creeks, Prince Creek and East and West Sopris creeks.
Q. What happens to the range around Mr. Light's place on the northeast, northwest and between Light's ranch and the forest?
A. Why in my estimation there never is any range there; there is range there but not any grass there to speak of; in the
300 early spring and in the winter there is sometimes grass there, but I have never seen cattle stay there.
Q. What has been your observation as to what the cattle do?

A. Why they would always drift up on to the higher country.
Q. And when you say "higher" what do you mean?
A. That is, the forest reserve.
Q. Did you see any of Mr. Light's stock on the forest reserve this present year?
A. I did.
Q. State when.
A. On September 6th I rode the range with the assistant supervisor John McLaren, and I saw eight head of "U Slash U" cattle and two head of the "Lazy T Open A" connected, or "Lazy T V" connected, whichever way you call it.
Q. What portion of the reserve were they found upon?
A. They were on the sawmill road; let's see, that is in—may I refer to my note-books?
Q. Did you make a note at the time?
A. Yes, I did.
Q. You may refer to it if it is necessary to refresh your memory.
A. Well, I seen some in the Hay Park country; that is in section—that was approximately in section 10, township 9, range 87.
Q. Where did you see the others?
A. They was on the sawmill road; I can not remember just what that was in.
Q. Were they on the land of the Government within the reserve?
A. Yes, they was a mile inside of the forest reserve, ap-
301 proximately a mile.
Q. Not upon private land?
A. No, not upon private land,—west of the forest reserve; they was in and around the sawmill road.
Q. Have you seen any trails, or do you know of any trails that lead from the vicinity of Mr. Light's place,—cattle trails?
A. Yes sir, I rode over some trails on September 12th below Light's place.
Q. Describe the trail?
A. Well, on the north side of the creek right below his place it has all been stamped down and eaten off where cattle has been running around there, and on the other side, well it is about the same off right along the creek it has all been tramped down where the cattle have been going, passing back and forth up and down the creek.
Q. On what other side?
A. On the south side, southwest side.
Q. Of his ranch?
A. Yes, of East Sopris; and there is at the upper end, or that is, at the upper end of this beaten down place or right below his fence there is a trail leading right out around his fence and going right towards East Sopris, going right to East Sopris.
Q. Where does the trail lead to, if you know?
A. Well, it eventually leads into the forest; it goes up to a creek that runs in the Shuttleworth place and across the creek, and you

can follow that run around the fences until you get up to
302 Thompson Place, and at Thompson Place there is a cañon in there and there is a road that turns up which is an old stock road, that turns up towards Hay Park and on the forest reserve.

Q. Will you state whether there were any evidences that cattle had used that trail?

A. Well, I didn't see no fresh tracks on the trail when I was there, but I have seen cattle on there in former years, former times when I was there.

Q. When you lived there what would the cattle do each spring?

A. They would turn them out there around the ranches and they would always work up on to the forest reserve; that is where the forest reserve is now, I believe, I have been there, too, since it was started.

Cross-examination.

By Mr. WARD:

Q. Mr. Powell, there are nearly always trails around the outside of fences, aren't they?

A. Yes sir, most always.

Q. Now please tell me where the Crown country is?

A. Well, it lies south of the Roaring Fork above Carbondale, just about four miles above Carbondale, and it lies west of Mr. Light's ranch, or the Sopris Creek.

Q. It is bounded on the north, then, by the Roaring Fork?

A. On the north by the Roaring Fork.

Q. And bounded on the east by West Sopris Creek; is that right?

A. On the east?

303 Q. Yes.

A. Why yes East and West Sopris Creek.

Q. East and West Sopris Creek on the east, and on the west it is bounded by the Big Four Ditch?

A. Yes.

Q. And on the south by the forest reserve?

A. Forest Reserve.

Q. And do I understand you to say that there is no water in the Crown range?

A. I have never seen any there except in the early spring; there are a couple of little pools up there that we call creeks.

Q. And is there any water in the Roaring Fork river?

A. There is a little, I don't know how much.

Q. You have seen the Roaring Fork river?

A. Yes. I would like to state that there is abundance of water in Roaring Fork.

Q. You won't say that there is a little water in the Roaring Fork?

A. No, hardly.

Q. And how about the East and West Sopris creeks?

A. They usually have water in them.

Q. Don't they always have an abundance of water all the time?

A. Not abundance, but they always have plenty for what stock is in that country.

Q. Have you ever seen either of those creeks dried up?
A. No sir.
Q. Is there a big flow of water all the year in those creeks?
A. There is always water.
Q. Isn't there good fishing up those creeks?
304 A. There is fishing there, I don't know how many you could catch.
Q. Plenty of water for all the cows that would stay there?
A. Yes, all the cows that would stay there,—an abundance of water.
Q. Isn't there enough water in the creek to water ten thousand cows every day?
A. I suppose there would be.
Q. But you still think that the Crown country is poorly watered?
A. I know that the Crown country is poorly watered.
Q. How far do you think that a cow may go to water without hurting it, every day?
A. All depends on the condition of the cow, whether southern or homebred cow.
Q. Take the average home-bred cows you have been used to over in that country, how far can they go without great damage, or any damage, to them, for water?
A. I don't know what their constitution is, but I think they would go about a mile, maybe.
Q. You don't think they would go more than a mile for water?
A. They would if they got thirsty.
Q. If they went more than a mile it would probably damage them?
A. If they was in very good condition it would not; if they was thin I don't know *bit* it would.
Q. You spoke of the people near Emma turning out five hundred head of cattle upon a certain portion of that range. Do you mean the Crown range?
A. No, I mean that they turned them out on the Sopris Creek, on the main Sopris Creek and on East and West Sopris
305 Creek.
Q. Yes. And what cattle were turned out on Prince Creek.
A. On Prince Creek?
Q. Yes.
A. Why, the "Four Bar" (=—=) cattle belonging to the Dinkle Mercantile Company.
Q. How many of them, approximately, seven hundred about?
A. Why I have a copy of the permit.
Q. Didn't you say awhile ago that there was about seven hundred turned out?
A. On Prince Creek. There is more than that turned out but they generally all go up Prince Creek.
Q. Where is Prince Creek; does that map show it?
A. No, this map doesn't show Prince Creek.
Q. Where is Prince Creek, further west?

A. Further west of Sopris.
Q. Over towards Carbondale?
A. Yes, runs down to Crystal river.
Q. Does that run anywhere near the Crown country range?
A. Yes, it bounds the Crown country property.
Q. On the north?
A. On the west,—west and southwest.
Q. Can cattle get on to that creek for water off the Crown country range?
A. Yes.
Q. How many more cattle were there over there with permits this summer on the territory south, the territory of the forest reserve southwest of Mr. Light's, do you know?
A. How many more?
Q. How many cattle, you have got twelve hundred, how
306 many more cattle were over there?
A. I couldn't say hardly.
Q. Did Williams Brothers have any cattle over there?
A. No, most of their cattle was back more towards Light's, up on the reserve, that way.
Q. Oh, they were back of Light's were they?
A. Yes, I never remember of seeing any on Prince Creek, or the Crown.
Q. Now those twelve hundred head that you spoke of being on Prince Creek and the Crown, they were run by people who had permits, weren't they?
A. Yes sir.
Q. And how many did the Williams Brothers have on the Holy Cross reserve close to Light's?
A. I couldn't say as to that: I seen several head up there.
Q. Have you an idea whether they had two or three hundred head?
A. Yes, by the sized bunches and taking everything into consideration I think they must have had that many anyway, if not more.
Q. Did Mr. Cookman have any cattle up there?
A. Yes, I seen some of Cookman's.
Q. Did Mr. John White have any cattle up there?
A. Yes sir. Do you mean on the forest reserve?
Q. Yes.
A. Yes.
Q. Did Mr. John Watson?
A. Sam Watson.
Q. Did Sam Watson have any cattle?
A. I seen a few.
Q. He had a permit, didn't he?
A. I could not say as to that.
Q. And did any of the ranchers up Sopris Creek above
307 Mr. Light's have any cattle on the reserve this year?
A. Albert Maurin had some cattle there.
Q. Those of course were run by permit?
A. Well, I was led to believe they was.

Q. And any others besides those of Albert Maurin?

A. Why there was Jacobson, I suppose that he had some, I couldn't say for sure, and Ibe.

Q. Well, how many cattle would you figure were running on that portion of the Holy Cross reserve this past summer, leaving out Mr. Light's cattle?

A. I couldn't say I am sure.

Q. Mr. Powell, you still think there is no grass down in that country northwest of Mr. Light's?

A. Yes sir.

Q. And you didn't see any cattle down there at all, did you?

A. Yes, I saw some cattle down there; I seen, I believe the last day I was over there—I didn't see any on West Sopris, but the time before I was there I seen about thirty head down below Light's and into the west of Light's ranch.

Q. Now years ago when you were younger you used to see more cattle over there, didn't you, than you do now?

A. Well, yes, I seen some more I think.

Q. Wouldn't you say a good many more, rather than some more?

A. No I would not.

Q. Isn't it true that the forest rangers make a business to
308 handle cattle up on the high range?

A. That is the regulations.

Q. And don't most of them comply with it more or less?

A. Yes sir.

Q. And isn't it a fact that one reason why you don't see more cattle down on the lower range is because cattle have been tolled up higher with salt, or by driving?

A. Why I don't think so.

Q. Cattle cannot very well go up on the high range and then go the next day to the low range?

A. No.

Q. Mr. Powell, explain to me why you think that you don't see any cattle down on this lower range now?

A. Cattle are not in the habit of staying where there isn't anything to eat, in my estimation.

Q. So you wish the court to understand that there is nothing to eat during the grazing season upon this lower range?

A. That is along after June, not after the first of June.

Q. Is there anything to eat there in the Fall or Winter?

A. Oh, there is a little, not very much, sometimes, it all depends on the rainfall there is along in the Fall.

Q. Do you remember that cattlemen have wintered cattle on the Crown range?

A. They might have somebody tried it, but they never have made a success; I don't believe they ever did winter cattle on the range; I know they didn't in the winter time.

Q. It is hard to winter cattle at that altitude?

A. Yes, it is impossible unless they are fed, it can not be done.

309 Q. And you think that blue-stem is a poor feed?

A. No sir, I think blue-stem is the best feed for horses and cattle that there is, when there is any.

Q. But there is no blue-stem in this Crown country range, or range northerly?

A. In the early spring there is.

Q. Now at this time of the year have you looked over that range recently?

A. Yes.

Q. Is there any feed or grass over on that range now?

A. None; well down the creek there is a little grass owing to the rainfall being so good this Fall.

Q. You have seen very few cattle on that range this summer?

A. Very few.

Q. Their tendency has been, as long as the cattle owners will comply with the rules and regulations, to get the cattle as high up as they can?

A. That was always the case before the reserve was made.

Q. And it is yet?

A. Yes.

Q. And the cattlemen who have permits have more or less complied with those regulations, have they not?

A. Yes. In regard to salting and things like that.

Q. And have more or less kept their cattle up on the forest range this past summer?

A. I never seen anybody driving them up.

Q. You have not?

A. No, only on this other district lying west of the Crystal river, of course, that is off of——

310 Q. Do you know that it was the custom of Fred Light in the past before the establishment of the forest reserve, to drive his cattle up on the hills?

A. Only from hearsay. I will contradict that, I did see Mr. Light's sons driving cattle up on the range one summer.

Q. And do you know of other people in the old times having to drive their cattle up on the hills to keep them away from eating the grass around the home?

A. Yes, I have done it myself: I have drove up Sam Watson's and numerous others that I worked for in the country on the higher ranges.

Q. Why did you drive them up?

A. Why there was nothing for them to eat down around the ranches, and I wanted to keep them up as long as possible to get the benefit of the range.

Q. They wouldn't go up there themselves, would they?

A. No, that is, not after cold weather sets in.

Redirect examination.

By Mr. KNAEBEL:

Q. When would they drive them up there, what season of the year?

A. Along in September, usually, after the first snow.

Q. Cattle have a tendency, then, to come down with the cold weather?

A. Yes, always.

Q. The ranchers there all have to feed their cattle during the winter?

A. Yes sir.

Q. Upon fodder that they raise on their land?

311 A. On their ranches, yes.

Q. What relation had the practice of driving cattle back upon the forest, to the question of winter feed?

A. Well, they would keep them up there as long as possible and get out of feeding them.

Q. This year the rainfall was unusually heavy, wasn't it?

A. It was very heavy.

Q. Something was said about lakes, and you yourself have referred to mud holes in this Crown country?

A. Yes.

Q. I wish you would state whether you know of a lake called "Dinkle Lake"?

A. Yes sir, that is on,—half in and half out of the forest reserve; it is all under fence; it is owned by The Dinkle Mercantile Company; it supplies water for the Big Four ranch; in fact that is all the water that would be in Prince Creek along in the summer besides just a few little springs—seeps.

Q. Is that in the Crown country?

A. It is on the west Crown country that this ditch comes from the Dinkle Lake.

Q. What if any other lakes are there in the Crown country?

A. I have never seen any other lakes; I have seen little pools there in the spring of the year.

Q. Have you seen anything in the nature of a body of water that was spoken of as a lake up there?

A. Of course pretty near everybody in that country
312–314 calls every little pool as big as this room a lake, but virtually there is no water there at all now, only just a little seep; I suppose it might water two or three head of cattle if they waited around there long enough. There mght be another lake, but I won't say as to that; I have never seen it and I have rode that country as thoroughly as I could.

Q. Have you ever heard of one?

A. I never did.

Q. What, in your judgment, is the condition from year to year now of the range around Mr. Light's and up in the Crown country, compared with what it was a number of years ago? Is there any difference?

A. In my opinion it is worse.

Q. And have you any reason upon which that may be accounted for?

A. Well, one reason I think in late years there hasn't been as much rain in the last of the season as there used to be, consequently

there wasn't enough moisture there in the winter to start the grass like it usually did.

Q. Mr. Powell, one question I omitted to ask on the direct; I would like your statement as to the condition of the forest range to the west and southwest of Mr. Light in respect of whether it has or has not been over-grazed?

A. Why, yes, I think it has been over-grazed this summer to a certain extent.

Recross-examination.

By Mr. WARD:

Q. Who over-grazed the forest range?

A. Why that is hard to say.

Q. Under whose control is the forest range?

A. The forest reserve.

315 Q. Yes, the forest reserve?

A. Why the United States is, to my knowledge, so far as I know.

Q. And the cattle that were there, with the exception of Light's, all had permits?

A. I never heard of any that didn't have.

Q. But you think, though, that with even the management as it has been over there that the lower portions are over-grazed?

A. Yes, I do.

Q. Do you recollect the spring of 1907 as to whether it was wet or a dry spring?

A. Why I couldn't say as to that,—1907.

Q. As to 1908?

A. As to 1908?

Q. Yes.

A. It was dry in the early spring.

Q. How about the summer of 1908,—wet or dry?

A. There has been quite a bit of rainfall the latter part of the summer and Fall.

Q. Was it wet or dry?

A. The rain was, it was wet.

Q. The season?

A. I would call it a wet season.

Q. But you still think the range is worse than it used to be?

A. Yes I do.

Q. In the good old days?

A. In the good old days, yes, sir.

Q. When they didn't have salt on the mountain tops?

A. They have always been salting more or less you know, not quite so many of them.

Q. Up on the higher range?

A. It used to be the custom.

Q. Whom did you see put salt up there?

A. Tucker and Schloss.

316 Q. When?

A. Five or six years ago.

Q. Where did they put salt on the higher range?
A. Where most people are putting it, in the Hay Park.
Q. Is that in high range?
A. Flat tops.
Q. Who put it on the flat tops?
A. My father has put it up himself.
Q. When?
A. Oh every year for the last fifteen years I guess until he sold out up there.
Q. How big a herd of cattle did your father have during those years that he put salt up there?
A. He had all the way from one to fifty.
Q. And how far did he have to go to get that salt up there from his home place.
A. And then Sam Watson——
Q. How far did your father have to go from his home place to get the salt on the hills?
A. Four miles, not to get it on the hills, to get it out where he put it.
Q. Where did he put it?
A. In Hay Park or little flat top, up to the east of Capital Creek.
Q. How far east of Fred Light's place did your father live then?
A. How far east did he live?
Q. Yes.
A. Oh I should judge that he lived twelve or thirteen miles.
Q. Twelve or thirteen miles?
A. Yes.

Q. And how far west of southwest of Mr. Light's ranch
317 was this place where your father put salt?

A. Why about eight miles; I don't know whether it is that far, maybe about six miles, I guess he does not live as far; I didn't measure it, I have been over there lots of times.

JAY BURDICK, a witness called on behalf of the complainant, being duly sworn testified as follows:

Direct examination.

By Mr. KNAEBEL:

Q. How old are you, Mr. Burdick?
A. Thirty.
Q. You are a forest ranger?
A. Yes, sir.
Q. How long have you been such?
A. The 1st of May 1908.
Q. And where has your work as ranger been?
A. The 8th district of the Holy Cross National Forest.
Q. Anywheres near Mr. Light's, if you know where that is?
A. Yes, his ranch is in that district, commonly called Capital Creek District.
Q. Were you assigned at any time to make an examination to see whether Mr. Light had any stock upon the Holy Cross reserve?

A. Yes sir, those were our instructions early in the season to take notes on the presence of Light's cattle upon the forest.

Q. Now so far as you were able to do so, what did you find in that regard?

A. Do you wish dates and numbers?

Q. Yes.

A. I took notes every time I saw his cattle. I can give you a list of the dates and numbers seen on those dates.

318 Q. I refer now only to the stock that you found upon the Government land.

A. Found on the Holy Cross National Forest district, that district before named, Capital Creek district: May 28, five head of T V, four head of U. Slash U. June 2nd, one U. Slash U. June 4th, one T V, three U. Slash U. June 5th, fourteen T. V. June 17th, eleven U. Slash U. June 22nd, three T V. June 24th, eight U. Slash U. June 30th, four U. Slash U. July 16th, two T V. July 23rd, one T V, five horses. August 4th, two T V. August 13th, two horses branded "T V". August 23rd, six U. Slash U. four T V and five horses.

Q. How were these horses branded?

A. Box L.

Q. Now go on, please.

A. August 28th, three U. Slash U.

Q. Were those the results of your observations in the course of your general duties as ranger in riding the range?

A. Those are my results of my general duties in riding the range, and this business as well as other business, traveling back and forth across the range, and when I have seen these cattle I have made a note of it.

Cross-examination.

By Mr. WARD:

Q. You were instructed especially, Mr. Burdick, to look up Mr. Light's cattle?

A. To look out for his cattle as well as others that might be trespassing.

319 Q. And of course you could not tell on these various dates whether the cattle you saw one date may not have been some animal you had seen two weeks before?

A. No, sir.

Redirect examination.

By Mr. KNAEBEL:

Q. Did you make any examination of the country north and east of Mr. Light's ranch which he calls the "Spring ranch" to find if there were any of Mr. Light's cattle upon it?

A. Yes sir.

Q. When did you do that?

A. The early part of September this year.

Q. Did you examine it before that?

A. Yes sir.

Q. When?

A. I was over that country in May and again in July; I have ridden over that country numerous times during the summer.

Q. State when, if ever, you saw Mr. Light's cattle upon it?

A. I can refer to the notes and give you the dates on that. On September 2nd I rode that country, and found sixteen head of T V cattle; the old cattle bore these brands here, also branded WL. On September 8th I returned through that country just as it was getting dark and counted nine head of T. V. September 9th. I only saw one head of Light's cattle on the hill sloping towards Capital Creek. That would be the eastern side of that hill: those cattle came to Capital Creek to water, there were twenty-three head came to Capital Creek to water that morning.

Q. Where were these cattle that you have spoken of?

A. They were northeast of Light's ranch.

320 Q. Did you see any of his cattle in that locality northeast of his ranch?

A. There was one of his cattle that date, September 9th, one of his among twenty-two others. I can give you the brands of the others.

Q. I don't want them.

A. September 10th.

Q. What were they, same as before September?

A. There were no cattle on that hill before the 1st of August; I rode home two times during July, didn't make any special note of dates, but there were no cattle in that country in July.

Q. And in May?

A. None in May, nor June.

Q. Saw some in August?

A. Some in August.

Q. About how many?

A. Oh, maybe ten or fifteen of his cattle there.

Q. And when did the rains begin?

A. Along in August I should think, about the middle of August.

Q. Do you know when the stock began to drift down out of the forest this last summer?

A. The stock began to drift down, well sometimes they will be a few scattered along the roads leading to the forest more or less all summer, half hid in the road.

Q. And this year was it later or earlier than usual?

A. I couldn't say as to former years, but this year there are cattle in the road that are drifting down all the time, and they are pushed back up again from time to time.

321 Recross-examination.

By Mr. WARD:

Q. Mr. Burdick, when did you come there to Mr. Cookman's place?

A. The first of May, the first I went on duty as a forest ranger.

Q. And do I understand—I may be mistaken—that there were no cattle of Mr. Light's on that mountain north of him during the month of May?

A. I didn't see any.

No 667 Light } p 323

RANGE 87 W.

RANGE. 86 W.

RANGE. 85 W.

T.8.S.

T.8.S.

T.9.S.

T.9.S.

HOLY CROSS NATIONAL FOREST

HOLY CROSS NATIONAL FOREST

Frying Pan

Sopris Creek

East Sopris

DE 177

DE 311

DE 601

DLE 659 UTE

DE 285

DE 285

DE

DE 781

DLE 432

DE 491

DE 510

DE 472

DE 414

DE 956

DE 418

DLE 560

DEN 561

DLE 571

DE 437

DLE 459

DE 562

DE 631 UTE

DE 343

DE 343

DE 772

DE 431

DE 557

DE 570

DE 198

DE 427

DE 567

Patented.

Entries.

Mr. Light's.

Mr. Light's Fence (approx.)

Q. Did you make any especial examinations for them?
A. I rode over that country once or twice during May.

Redirect examination.

By Mr. KNAEBEL:

Q. What time in May?
A. I rode the country once early in May, and again later the first week in May I rode over once.
Q. And the last time was when?
A. The last time was about two weeks later.

It is hereby stipulated by the parties to this cause through their respective counsel that the depositions of the witnesses John McLaren, W. S. Copeland, Harry H. French, Gideon Cookman, N. S. Ashlock, Frank A. Powell and Jay Burdick which have been taken before Sanford C. Hinsdale, Esq., upon September 24th, 25th and 26th, and reduced to stenographic minutes by Miss Nellie Preston, Stenographer, pursuant to the consent of the said counsel, may be by the said stenographer transcribed into typewriting, and as so transcribed may be certified by the Examiner to the court as testimony duly and properly taken in the cause; and that the signatures of the several witnesses to their respective depositions are hereby waived.

Adjourned subject to notice.

322 UNITED STATES OF AMERICA,
District of Colorado, ss:

I, Sanford C. Hinsdale, duly appointed Examiner in Chancery by the Circuit Court of the United States for the District of Colorado, do hereby certify that on the days mentioned in the proceedings and depositions in this cause I was attended by the counsel and witnesses aforesaid at my office, room 803 Continental Building, Denver, Colorado; that said witnesses, to-wit, John McLaren, W. S. Copeland, Harry H. French, Gideon Cookman, N. S. Ashlock, Frank A. Powell and Jay Burdick, each were first duly sworn according to law, as witnesses in the suit or cause in the caption hereto mentioned, and there examined before me orally by counsel; and by the consent of the parties by their several said solicitors the examinations and depositions of said witnesses were severally stenographically written down and afterwards typewritten; that such examinations were had in the presence of the solicitors of the several parties hereto, and that said depositions, after being completed and typewritten, were duly sworn to by the said witnesses, whose signatures thereto were waived by stipulation of counsel.

I further certify that the foregoing is a true statement of all the proceedings had before me on the days mentioned, in the matter of taking testimony herein, and that complainant's exhibits marked 1 to 6 inclusive were duly introduced in evidence, and are herewith returned into court.

SANFORD C. HINSDALE,
Examiner in Chancery.

(Here follows diagram marked p. 323.)

324-325

EXHIBIT No. 4.

Compl't's Proofs.

S. C. Hinsdale, Examiner.

Executive Order.

Holy Cross National Forest.

Colorado.

It is hereby ordered that on and after July 1, 1908, the land within the boundaries shown on the attached diagram, heretofore set apart, reserved, and proclaimed as parts of the Holy Cross, Leadville, Gunnison, and Battlement Mesa National Forests, shall be known as the Holy Cross National Forest. The remaining portions of the Holy Cross National Forest shall continue reserved and constitute parts of the Leadville National Forest. It is not intended by this order to release any land from reservation or to reserve any land not heretofore embraced in a National Forest.

THEODORE ROOSEVELT.

The White House, July 1, 1908.

[No. 870.]

(Here follows diagram marked p. 325*a*.)

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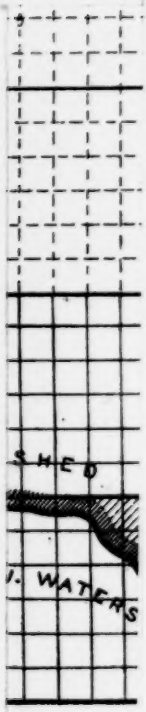

R. 83 W.